

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

Transcript of Record.

(IN TWO VOLUMES.)

---

FRANK L. TOBEY and RETTA M. TOBEY,  
His Wife, AUGUSTA M. TOBEY and  
WILLIAM L. TOBEY,

Appellants,

vs.

EDWARD C. KILBOURNE et al.,

Appellees.

---

VOLUME I.

(Pages 1 to 336, Inclusive.)

---

Upon Appeal from the United States District Court for  
the District of Oregon.

Filed

JAN 14 1915

F. D. Monckton,  
Clerk.

---



United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

Transcript of Record.

(IN TWO VOLUMES.)

---

FRANK L. TOBEY and RETTA M. TOBEY,  
His Wife, AUGUSTA M. TOBEY and  
WILLIAM L. TOBEY,

Appellants,

vs.

EDWARD C. KILBOURNE et al.,

Appellees.

---

VOLUME I.  
(Pages 1 to 336, Inclusive.)

---

Upon Appeal from the United States District Court for  
the District of Oregon.

---





# INDEX.

	Page
Abstract of Evidence .....	91
Allowance of Appeal, petition for .....	77
Amended Answer of Edward C. Kilbourne and Charles A. Kilbourne to Complaint .....	48
Appeal, bond on .....	86
Appeal, Notice of, with Acknowledgment of Ser- vice .....	89
Appeal, Order allowing .....	85
Appeal, Transcript of Testimony on .....	92
Assignment of Error by Solicitors for Complain- ants and Appellants .....	78
Assignment of Mortgage in Exhibit F of Com- plaint, (dated November 1, 1911, W. J. Burns to Edinburg Pacific Coast Mortgage Agency Limited) .....	44
Attorneys of Record, names and addresses .....	1
Bond on Appeal .....	86
Citation on Appeal .....	89
Complaint .....	3
Complaint, Amended Answer to, of Edward C. Kilbourne and Charles A. Kilbourne .....	48
Complaint, Exhibit A to (Agreement dated March 4, 1911, between W. E. DeLarm and W. L. Tobey, et. al). .....	24
Complaint, Exhibit B to, (Deed, dated March 15, 1911, F. L. Tobey and Retta M. Tobey to Edward C. Kilbourne) .....	29
Complaint, Exhibit C to, (Deed, dated March	

Index.	Page
15, 1911, from Augusta M. Tobey to Edward C. Kilbourne) . . . . .	31
Complaint Exhibit D to, (Deed, dated March 15, 1911, from William L. Tobey to Edward C. Kilbourne) . . . . .	33
Complaint, Exhibit E to, (Deed, dated March 15, 1911, from William L. Tobey, Frank L. Tobey and Retta M. Tobey to Edward C. Kilbourne) . . . . .	35
Complaint, Exhibit F to, (Assignment of Mortgage, dated November 1, 1911, W. J. Burns, to Edinburg Pacific Coast Mortgage Agency, Limited) . . . . .	44
Complaint, Exhibit F to, (Assignment of Mortgage, dated March 27, 1911, Charles A. Kilbourne to W. J. Burns) . . . . .	38
Decree . . . . .	76
Entry of Appearance of Solicitors for Edward C. Kilbourne, et. al. . . . .	47
Errors, Assignment of, by Solicitors for Complainants and Appellants . . . . .	78
Evidence, Abstract of . . . . .	91
Exhibit A to Complaint (Agreement dated March 4, 1911, between W. E. DeLarm and W. L. Tobey, et. al.) . . . . .	24
Exhibit B to Complaint (Deed, dated March 15, 1911, from F. L. Tobey and Retta M. Tobey to Edward C. Kilbourne) . . . . .	29
Exhibit C to Complaint (Deed, dated March 15,	

Index.	Page
1911, from Augusta M. Tobey to Edward C. Kilbourne) .....	31
Exhibit D to Complaint (Deed, dated March 15, 1911, from William L. Tobey to Edward C. Kilbourne) .....	33
Exhibit E to Complaint (Deed, dated March 15, 1911, William L. Tobey, Frank L. Tobey and Retta M. Tobey, to Edward C. Kilbourne) .....	35
Exhibit F to Complaint (Assignment of Mortgage, dated November 11, 1911, W. J. Burns to Edinburg Pacific Coast Mortgage Agency, Limited) .....	44
Exhibit F to Complaint (Mortgage, dated March 27, 1911, Charles A. Kilbourne to W. J. Burns) .....	38
Memorandum on the Merits—Opinion .....	71
Names and Addresses of Attorneys of Record..	1
Notice of Appeal, with Acknowledgment of Service .....	89
Opinion .....	71
Order Allowing Appeal .....	85
Petition for Allowance of Appeal .....	77
Praecipe, this .....	689
Transcript of Testimony on Appeal .....	92
Transcript of Testimony of Witnesses for Plaintiffs, of—	
W. L. Tobey .....	92
Recalled .....	547

Index.	Page
C. E. Sox .....	363
Jay Bowerman .....	361
A. J. Biehl .....	351
F. L. Tobey .....	336
Recalled .....	548
Mrs. Jennie C. Koppen .....	329
Recalled .....	545
E. O. Tobey .....	326
Recalled .....	546
J. A. Ward .....	324
L. O. Ralston .....	322
R. T. Cox .....	318
J. L. Blalock .....	314
Lewis B. Sichlar .....	280
M. Isabelle Forbes .....	277
Recalled .....	290
Recalled .....	546
Pearl M. Day .....	249
Oscar G. Heaton .....	223
F. C. Koppen .....	216
Recalled .....	266
C. J. Steeples .....	213
R. J. Brazell .....	204
J. H. Edwards .....	191
G. H. Plummer .....	162
Transcript of Testimony of Witness for Defendants, of—	
E. C. Kilbourne .....	365
Recalled .....	543

Index.	Page
Charles A. Kilbourne .....	487
William McKenzie .....	486
J. G. Blake .....	485
Everett Smith .....	484
H. P. Nolan .....	473
J. W. Todd .....	471
H. S. Wells .....	470
Walter S. Wade .....	463
William F. Howe .....	465
A. B. Graham .....	461
Frederick G. Simpson .....	458
S. B. Hill .....	457

#### PLAINTIFFS' EXHIBITS.

1. Contract between Tobey & DeLarm, March 4, 1911 .....	550
2. Escrow agreement .....	550
3. Agreement regarding Tobey Loan .....	550
4. Deed from N. P. to Columbia River Water Co. ....	550
5. Trust Agreement, Washington Trust, 5- 21-10 .....	551
6. 6a-6b-6c Robinson Desert Land mortgage and assigns .....	551-552
7. Cords desert land mortgage .....	552
8. 8-a 8-b Koppen Water right contracts ....	552
9. Gagner desert land mortgage .....	552
10. 10-a, 10-b, 10-c, Wattle mortgage and as- signments .....	552-553
11. Receipt for securities O. & Wash. Trust	

	Index.	Page
	3-28-11 .....	553
12.	12-a 12-b 12-c DeLarm affidavits valid securities .....	555-556
13.	Letter DeLarm to Trust Co. RE resignation 2-3-11 .....	556
14.	Letter Edwards to Col. R. Orchards Co. 2-7-11 .....	557
15.	Letter Edwards to Ore. Wash. Trust re trust 2-7-11 .....	557
17.	Assignment securities Wash. Trust to Ore. & W. Trust .....	557
18.	Brazell letter 12-29-10 .....	558
19.	Minutes first meeting W. & O. Trust .....	560
20.	Subscription capital stock W. & O. Trust.	560
21.	Minutes first stockholders meeting O. & W. Trust .....	560
22.	Minutes first Directors meeting O. & W. Trust .....	561
23.	Letter Brazell to Koppen, 5-15-11 .....	563
24.	Domay mortgage—identified .....	564
25.	Trust agreement Col. Riv. Or. & O. & W. Trust .....	565
26.	Agreement 1-31-11 Col R. O. & O. & W. Trust, continuing trust agreement .....	567
32.	Jennie Koppen land mortgage .....	568
33.	Stickel desert land mortgage .....	568
34.	Perry desert land mortgage .....	568
35.	\$1,000,000 mortgage Wash. Ir. & Fruit to O. & W. T. ....	568

	Index.	Page
36.	\$5,750,000 mortgage—identified . . . . .	569
37.	Extract from journal O. & W. Trust . . . . .	571
38.	Letter Hodges to DeLarm & Biehl 3-6-11. . . . .	572
39.	Letter Biehl to DeLarm 10-26-11 . . . . .	573
40.	Form sales contract . . . . .	573
41.	Koppen agreement with Was. Or. Ir. & Fruit, ident. . . . .	574
42.	Domay mortgage . . . . .	574
43.	Assignment Cords mortgage C. R. O. to C. R. O. . . . .	575
44.	Assignment same to Wash. Trust . . . . .	575
45.	Assignment Gagner mortgage to C. R. O. . . . .	575
46.	Assignment Gagner mortgage to Wash. Trust . . . . .	575
47.	Affidavit DeLarm as to valid securities . . . . .	576
48.	Assignment Wattle mortgage to C. R. O. Co. . . . .	576
49.	Assignment Wattle mortgage to Wash. Trust . . . . .	576
50.	Minutes stockholders meeting W. O. I. & F. Co. 1-28-11 . . . . .	576
51.	Minutes Directors meeting W. O. I. & F. Co. . . . .	578
52.	Petition in Bankruptcy Co. R. Or. . . . .	578
53.	Petition in Bankruptcy Wash. O. I. & F. Co. . . . .	579
54.	Record Puget Sound B. & Dredg. Co. vs. Col. R. O. Co. . . . .	579
55.	Contract Freel, Maltbie & Pearl to C. R.	



	Index.	Page
	O. Co. ....	580
56.	Land Contract Davis to Maltbie & Pearl..	581
57.	Transcript record declaring \$1,000,000 mortgage void .....	581
58.	Letter Kilborne to W. O. I. & F. Co. 3- 24-11 .....	582
59.	Letter DeLarm to Chapman, 9-9-11 .....	582
60.	Affidavit DeLarm accompanying Mrs. Koppen affidavit .....	591
61.	Letter Hodges 6-19-11 .....	591
62.	Financial Statement Col. R. Or. 2-15-11..	591
63.	Financial Statement Col. R. Or. to Fidel- ity & Dep. Co. ....	592
64.	Summary Irrigation project C. R. O. Co. .	594
65.	Biehls' statement finances W. O. I. & F. Co. undated .....	596
66.	Letter DeLarm to Fox 4-8-11, \$20,000 agreement .....	598
67.	Minutes stockholders W. O. I. & F. Co. 9-9-11 .....	598
68.	Chapman-DeLarm agreement 9-9-11 .....	599
69.	Letter MacWhorter to Hodges 2-25-11 ...	599
70.	Letter Humphrey to Standard Investment 3-4-11 .....	600
71.	Letter Humphrey to Mrs. Nickell 4-28-11.	600
72.	Letter Hodges to DeLarm and Biehl 2-2-11	601
73.	Letter Hodges to DeLarm and Biehl 2-3-11	601
74.	Letter Hodges to DeLarm and Biehl 2-5-11	601
75.	Letter Biehl to MacWhorter 8-23-11 ....	602



	Index.	Page
76.	Agreement Biehl and Stevens 4-25-11 ...	602
77.	Letter Biehl to Leonard Agency 5-3-11 ...	603
78.	Letter Hodges to C. R. O. Co. 10-4-10 ...	603
79.	Letter Hodges to C. R. O. Co. 10-6-10 ....	605
80.	Letter Hodges to C. R. O. Co. 10-8-10 ....	605
81.	Letter Hodges to C. R. O. Co. 12-6-10 ....	606
82.	Letter Hodges to blank 1-26-11 .....	606
83.	Letter Hodges to Cooney 1-27-11 .....	606
84.	Letter Hodges to DeLarm & Biehl 2-9-11	607
85.	Letter Hodges to DeLarm & Biehl 2-11-11	608
86.	Letter Hodges to DeLarm & Biehl 2-14-11	608
87.	Letter Hodges to Biehl 2-15-11 .....	610
88.	Letter Hodges to DeLarm & Biehl 2-21-11	610
89.	Letter Hodges to Graves 2-24-11 .....	610
90.	Letter Hodges to DeLarm & Biehl 3-1-11	610
91.	Letter Hodges to DeLarm & Biehl 3-3-11	612
92.	Letter Hodges to DeLarm & Biehl 3-7-11	612
93.	Letter Hodges to Douglas 3-4-11 .....	613
94.	Letter Hodges to Graves 3-21-11 .....	613
95.	Letter Hodges to DeLarm & Biehl 3-29-11	613
96.	Letter Hodges to DeLarm & Biehl 3-31-11	614
97.	Letter Hodges to Lowry 4-3-11 .....	614
98.	Letter Hodges to DeLarm & Biehl 4-4-11	615
99.	Letter Hodges to DeLarm & Biehl 4-4-11	615
100.	Letter Hodges to DeLarm & Biehl 4-6-11	615
101.	Letter Hodges to DeLarm & Biehl 4-9-11	616
102.	Letter Hodges to Crawford 4-10-11 .....	616
103.	Letter Hodges to Joseph 4-27-11 .....	616
104.	Letter Hodges to DeLarm & Biehl 5-1-11	616

	Index.	Page
105.	Letter Hodges to DeLarm 5-10-11 . . . . .	617
106.	Letter Hodges to DeLarm & Biehl 7-25-11	618
107.	Letter Hodges to Wood 6-21-11 . . . . .	620
108.	Letter Hodges to DeLarm & Biehl 7-27-11	620
109.	Letter Hodges to Rausch 7-28-11 . . . . .	621
110.	Letter Hodges to DeLarm 8-17-11 . . . . .	622
111.	Letter Hodges to DeLarm & Biehl 8-18-11	622
112.	Letter Hodges to DeLarm "Sunday" . . .	625
113.	Letter Biehl to DeLarm Tuesday 20-11 . .	625
114.	Letter Biehl to DeLarm Tuesday 17th . .	626
115.	Letter Biehl to DeLarm 8-10-11 . . . . .	627
116.	Letter Biehl to DeLarm 8-19-11 . . . . .	627
117.	Letter Biehl to DeLarm 8-21-11 . . . . .	628
118.	Letter Biehl to DeLarm 8-22-11 . . . . .	628
119.	Letter Biehl to DeLarm 8-23-11 . . . . .	628
120.	Letter Biehl to DeLarm 8-24-11 . . . . .	629
121.	Letter Biehl to Chapman 8-25-11 . . . . .	630
122.	Letter Biehl to DeLarm 9-1-11 . . . . .	630
123.	Letter Biehl to DeLarm 9-3-11 . . . . .	631
124.	Letter Biehl to DeLarm 9-11-11 . . . . .	632
125.	Letter Biehl to DeLarm 10-11-11 . . . . .	633
126.	Letter Biehl to DeLarm 10-12-11 . . . . .	634
127.	Letter Biehl to DeLarm 10-25-11 . . . . .	634
128.	Letter Biehl to DeLarm 11-14-11 . . . . .	635
129.	Letter Biehl to DeLarm 11-22-11 . . . . .	636
130.	Letter Biehl to Walters 12-15-11 . . . . .	636
131.	Letter Biehl to DeLarm . . . . .	636
132.	Letter Biehl to DeLarm 12-26-11 . . . . .	636
133.	Form Land certificate . . . . .	637

Index.

Page

134.	Domay deed to Wash. O. I. & F. Co. . . . .	637
134 $\frac{1}{2}$ .	Statements assets and liabilities W. O. I. & F. Co. . . . .	638
135.	Statement indebtedness C. R. O. Co. to Kil- bourne Co. . . . .	638
136.	Letter Kilbourne Clarke to DeLarm 10- 27-10 . . . . .	641
137.	Letter Kilbourne to DeLarm 11-8-10 . . . .	642
138.	Receipt for deed Reinmouth property . .	642
139.	Biehl receipt Kilbourne Co. for mortgages	642
140.	Letter Kilbourne to Puget S. Realty Co. 6-8-11 . . . . .	643
141.	Statement enclosed with 140 . . . . .	643
142.	Letter Kilbourne to Nott, identified . . . .	423
	Offered . . . . .	644
143.	Assignment water mortgages . . . . .	644
144.	Kilbourne receipt for deed to Col. R. O. Co. . . . .	645
145.	Letter Kilbourne to Glover . . . . .	645
146.	Letter Pacific Power & Lt. to Kilbourne 2-7-11 . . . . .	646
147.	Letter Col. R. Orchards to Kilbourne Clark 2-10-11 . . . . .	646
148.	Letter to DeLarm & Biehl 7-10-11 . . . .	647
149.	Letter Hodges to Leet 4-8-11 . . . . .	649
150.	Kilbourne Affidavits . . . . .	650
151.	Kilbourne Affidavits . . . . .	653

DEFENDANTS' EXHIBITS.

A.	Blueprint of lands under irrigation scheme	661
----	--	-----

	Index.	Page
B.	Another blueprint .....	662
C.	Letter Plummer to DeLarm 1-22-12 .....	662
D.	Letter DeLarm to Wakefield 9-16-11 .....	662
E.	Agreement Tobey and DeLarm 2-25-12 ....	662
F.	Contract Col. R. O. & Kilbourne Clarke Co. 1-18-10 .....	663
G.	Amendment to F 5-18-10 .....	664
H.	Contract Kilbourne Clarke & Puget S. B. & D. ....	666
I.	Kilbourne Memo re Tobey ranch .....	668
J.	Letter Plummer to Kilbourne 6-9-10 .....	669
K.	Letter from Cooper 7-13-10 .....	670
L.	Statement Kilbourne Clarke to C. R. O. Co. 10-31-11 .....	670
M.	Statement Kilbourne Clarke to C. R. O. Co. 9-22-10 .....	673
N.	Letter Kilbourne to Glover May 23, 1911 ..	673
O.	Blue print Wahluke Machinery .....	674
P.	Statement Col. R. O. Co. to Nolan .....	674
Q.	Financial statement Col. R. O. Co. ....	675
R.	Printed pamphlet put out by Col. R. O. Co.	676
S.	Another pamphlet .....	677
T.	Statement payments Kilbourn es ac. Col. R. O. Co. ....	677
U.	Vouchers verifying above .....	684
V.	Statement showing operation of ranch 1912 and 1913 .....	684
W.	Letter Puget Sound B. & D. 1-25-12 to Kil- bourne Co. ....	687

*In the District Court of the United States for the  
District of Oregon.*

FRANK L. TOBEY and RETTA M. TOBEY his  
wife, AUGUSTA M. TOBEY, and WILLIAM  
L. TOBEY,

Complainants,

*vs.*

W. E. DE LARM, EDWARD C. KILBOURNE,  
CHARLES A. KILBOURNE, J. ALEXANDER  
WAKEFIELD, CYRUS F. CLAPP, H. E.  
LUTZ, W. J. BURNS, THE EDINBURG AND  
PACIFIC COAST MORTGAGE AGENCY LIM-  
ITED, COLUMBIA RIVER ORCHARDS COM-  
Trustee, a corporation, and THE WASHING-  
TON TRUST COMPANY, of Portland, Oregon,  
Trustee, a corporation, and THE WASHING-  
TON ORCHARD IRRIGATION AND FRUIT  
COMPANY, a corporation,

Defendants.

[Names and Addresses of Attorneys of Record]  
*For Appellants—*

A. C. WOODCOCK, E. R. BRYSON, R. S.  
SMITH, JOHN M. WILLIAMS and LOUIS  
E. BEAN, Eugene, Oregon.

*For Appellees—*

C. E. S. WOOD, RICHARD W. MONTAGUE,  
ISAAC D. HUNT, and ERSKINE WOOD,  
Spaulding Building, Portland, Oregon.

---

*In the District Court of the United States for the  
District of Oregon*

March Term, 1912.

BE IT REMEMBERED, That on the 14th day of  
June, 1912, there was duly filed in the District Court  
of the United States for the District of Oregon, a bill  
of complaint, in words and figures as follows, to  
wit:



[Complaint]

*In the District Court of the United States for the  
District of Oregon.*

FRANK L. TOBEY and RETTA M. TOBEY, his  
wife, AUGUSTA M. TOBEY, and WILLIAM  
L. TOBEY,

Complainants,

vs.

W. E. DeLARM, EDWARD C. KILBOURNE,  
CHARLES A. KILBOURNE, J. ALEXAN-  
DER WAKEFIELD, CYRUS F. CLAPP, H.  
E. LUTZ, W. J. BURNS, THE EDINBURGH  
and PACIFIC COAST MORTGAGE AGEN-  
CY, LIMITED, COLUMBIA RIVER ORCH-  
ARD COMPANY, A Corporation, OREGON-  
WASHINGTON TRUST COMPANY, OF  
PORTLAND, OREGON, Trustee, a Corpora-  
tion, and THE WASHINGTON ORCHARD  
IRRIGATION AND FRUIT COMPANY, a  
Corporation,

Defendants.

BILL OF COMPLAINT

To the Honorable Judges of the District Court of  
the United States for the District of Oregon:

Your orators herein, Frank L. Tobey, Retta M.  
Tobey, Augusta M. Tobey and William L. Tobey.  
are citizens of the United States and residents and  
citizens of the State of Oregon, and within the above  
named judicial district of the State of Oregon.

## I.

Your orators are informed and believe that the defendant, W. E. DeLarm, was at the time said transaction was entered into, a citizen of the State of Washington, but your orators are informed and believe that he has disappeared and they do not know now where he is.

## II.

Your orators are informed and believe that the defendants Edward C. Kilbourne and Charles A. Kilbourne, are citizens of the State of Washington.

## III.

Your orators are informed and believe that the defendant, J. Alexander Wakefield, is a citizen of the State of Washington.

## IV.

Your orators are informed and believe that the defendant Cyrus F. Clapp is a citizen of the State of Washington.

## V.

That your orators do not know the place of residence of the defendant H. E. Lutz.

## VI.

That your orators are informed and believe that the defendant W. J. Burns is a citizen of the State of Oregon.

## VII.

That your orators are informed and believe that the defendant the Edinburg & Pacific Coast Mortgage Agency, Limited, was at all the times herein al-



leged, and is now, a corporation doing business within the State of Oregon, the place of incorporation being unknown to your orators.

VIII.

That your orators are informed and believe that the Columbia River Orchard Company was at all the times herein alleged, and now is, as far as these orators are informed, a corporation organized under the laws of the State of Washington.

IX.

That your orators are informed and believe that the Oregon-Washington Trust Company was at all the times herein alleged, and is now, as far as your orators are informed, a corporation organized under the laws of the State of Washington, having its principal office and place of business in the City of Portland, Oregon.

X.

That your orators are informed and believe that the Washington Orchard Irrigation & Fruit Company was at all the times herein alleged, and is now, as far as your orators are informed, a corporation organized and existing under the laws of the State of South Dakota.

XI.

That on the 4th day of March A. D. 1911, all of your orators, except the above named Augusta M. Tobey, entered into a certain agreement with the above named defendant W. E. DeLarm, a copy of

which said agreement is hereto annexed, marked exhibit A and made a part hereof.

## XII.

That at the time said agreement was entered into, your orators owned what is denominated in said agreement "a certain wheat ranch located in the County of Gilliam and the State of Oregon, and consisting of about 4,350 acres of land." That said land is generally described in said agreement as being situated in Section 31, Township 1 North Range 21 East; parts of Sections 1 and 12, Township 1 South of Range 22 East; all of Sections 7 and 8, one-half of Section 9, part of Section 3, all of Section 4, part of Section 5 and all of Section 6, Township 1 South of Range 22 East, and known as the Tobey Brothers Ranch.

## XIII.

That in said agreement it was stipulated that in addition to the lands described the parties to said agreement, that is, The Tobey's, should also convey to said W. E. DeLarm all the accessories, tools and thirty-six head of horses and mules in good working condition, to be selected in the manner set forth in said agreement, and all equipment and appurtenances belonging to said ranch, including the growing crop thereon.

## XIV.

That in said agreement it was provided that the purchase price to be paid by said DeLarm was the sum of One Hundred Forty-one Thousand (\$141,-

000.00) Dollars; that said purchase price was to be paid according to said agreement by the payment of One Thousand (\$1,000.00) Dollars at the time the deeds and bills of sale transferring the personal property were delivered, and One Hundred and Forty Thousand (\$140,000.00) Dollars of said purchase price was to be paid by delivering to the second parties to said agreement Series A Columbia River Orchard Company seven per cent twenty year bonds of the par value of One Hundred and Forty Thousand Dollars.

#### XV.

Another provision in said agreement was to the effect that DeLarm, the first party, was to secure for the second parties a loan on the bonds as follows: Three Thousand Dollars at the time of delivery of the title to said agreement, and Three Thousand Dollars on or before April 15, 1911. Said loan to be secured by the bonds described in said agreement at the ratio of Two Hundred Dollars in bonds for each One Hundred Dollars so loaned, interest to be seven per cent, and loan to run until on or before February first, 1912.

#### XVI.

That the ownership of said real property was divided among your orators, some of them owning jointly and some severally, but that the whole transaction was made with all of them jointly, with the idea that the entire tract was treated as being owned by the parties named in said agreement, together

with the said Augusta M. Tobey, and they all acted together and the property was treated both by the said DeLarm and the said Tobey as being owned by them the same as if it had been a joint ownership.

#### XVII.

That afterward at the request of said DeLarm and without any further consideration on the part of the grantee hereinafter named, the said parties to said agreement, together with the said Augusta M. Tobey, made conveyance to one Edward C. Kilbourne as follows:

That on March 15, 1911, Frank L. Tobey and Retta M. Tobey, his wife, executed in favor of said Edward C. Kilbourne and delivered to said W. E. DeLarm, a deed of conveyance to the following described real property, to-wit:

Northwest quarter of Northwest quarter of Section four (4), North half of Section Seven (7); all in Township One (1) South Range Twenty-two (22) East of the Willamette Meridian, containing 371 acres more or less. All of which said real property is situated in the County of Gilliam, State of Oregon.

That said deed was, on the 30th day of March, A. D. 1911, at 10 o'clock A. M. recorded at page 172 in Book W of the Deed Records of Gilliam County, Oregon, copy of which said deed is hereto annexed, marked exhibit B and made a part hereof.

#### XVIII.

That on the 15th day of March, 1911, the said Augusta M. Tobey, at the request of W. E. DeLarm,

executed in favor of said Edward C. Kilbourne, and delivered to said W. E. DeLarm, a deed of conveyance to the following described real property, situated in the County of Gilliam, State of Oregon:

All of lots three and four, five and six of Section Three, and lots one and two, and the South half of the Northeast quarter of Section four, all in Township One South of Range Twenty-two East of the Willamette Meridian, containing in all 343.36 acres, more or less.

Which said deed was, on the 30th day of March A. D. 1911, at 10 o'clock A. M. recorded at page 175, Book W of the Deed Records of said Gilliam County, Oregon, copy of which said deed is hereto annexed, marked exhibit C and made a part hereof.

### XIX.

That on the said 15th day of March, 1911, at the request of said W. E. DeLarm, William L. Tobey, unmarried, executed in favor of said Edward C. Kilbourne, and delivered to said W. E. DeLarm, a deed of conveyance to the following described real property situated in the County of Gilliam, State of Oregon:

Northeast quarter of Section Twelve (12), Township One (1) South of Range Twenty-one (21) East, Lots three (3) and four (4) and the East half of Southwest quarter of Section Seven (7), and Northeast quarter of the Southwest quarter of Section four (4), and East half of the Northwest quarter of



Section four (4) all in Township One (1) South of Range Twenty-two (22) East of the Willamette Meridian, containing altogether 447.35 acres more or less; which said deed was, on the 30th day of March, A. D. 1911, at 10 o'clock A. M. recorded on page 174 Book W of the deed records of Gilliam County, Oregon, a copy of which said deed is hereto annexed, marked exhibit D and made a part hereof.

## XX.

That on the 15th day of March, 1911, said Frank L. Tobey and Retta M. Tobey his wife, and William L. Tobey, unmarried, at the request of said W. E. DeLarm, executed in favor of said Edward C. Kilbourne a deed of conveyance for the following described real property situated in the County of Gilliam, State of Oregon, to-wit:

East half of the northwest quarter and the northwest quarter of northwest quarter, and the east half of southwest quarter; and southwest quarter of southwest quarter of section Thirty-one; Township One North Range Twenty-two East of the Willamette Meridian, east half of east half of section one in township one south range twenty-one east of Willamette Meridian, Southwest quarter of northwest quarter, northwest quarter of southwest quarter; south half of southwest quarter and southeast quarter of section four, northeast quarter of northeast quarter, west half of northeast quarter, northwest quarter and south half of section five, east half and northwest quarter and west half of southwest quar-

ter of section six, southeast quarter of section seven, all of section eight, west half of section nine, all in Township one South Range twenty-two east of the Willamette Meridian, containing altogether 3107.58 acres more or less; which said deed was, on the 30th day of March, 1911, at 10 o'clock A. M. recorded on page 173 of Book W of the Deed Records of said Gilliam County, Oregon, copy of which said deed is hereto annexed, marked exhibit E and made a part hereof.

### XXI.

That the parties named in said agreement as entered into, and being Exhibit A herein, that is the parties of the second part, executed and delivered to said W. E. DeLarm a bill of sale for all of the personal property, equipment, etc., mentioned in said agreement.

### XXII.

That said real property, at the time said agreement was entered into, was of the reasonable value of One Hundred Forty-one Thousand Dollars, and is worth that much and more now.

### XXIII.

That said personal property was, at the time it was turned over as herein alleged, of the value of Thirteen Thousand Five Hundred to Fourteen Thousand Dollars, and would be worth that much and more at the present time if the same could be redelivered to the complainants herein.

### XXIV.

That upon the execution and delivery of said deeds

and the said bill of sale, and the delivery of said personal property, the said W. E. DeLarm caused to be delivered to your orators the bonds mentioned in said original agreement, entered into, being your orators exhibit A, as follows:

14, Five Thousand Dollar Bonds,

120, Five Hundred Dollar Bonds,

40, One Hundred Dollar Bonds,

That other bonds were issued and delivered to your orators to the amount of six thousand dollars for the purpose of securing a loan furnished by said W. E. DeLarm, which will be more fully hereinafter explained;

That the number of said bonds or the par value of the same cannot now be stated, except to state that the total par value of the same was six thousand dollars, making a total of One Hundred Forty Thousand Dollars.

## XXV.

That at the time said deeds were made to said Edward C. Kilbourne the said W. E. DeLarm represented to your orators that the said Edward C. Kilbourne was a friend of his and was associated with him in the business, and for convenience desired to have the deeds made to him instead of to the said W. E. DeLarm.

That the said Edward C. Kilbourne was with the said DeLarm examining the property, and your orators were led to believe, and it was represented to them by the said W. E. DeLarm, that the said Ed-



ward C. Kilbourne was associated with him in the transaction which led to the execution of said deeds.

That these bonds are such bonds as were mentioned in the contract hereto annexed, and marked your orators' exhibit A, being noted by the bonds themselves as well as by said contract, as Series A and being of various denominations as herein set forth.

## XXVI.

That the said W. E. DeLarm was the President of the Columbia River Orchard Company, and as such President had authority to enter into such transactions as said company had a right to enter into.

## XXVII.

That during all the times that the question as to the value of said bonds was considered by your orators and said DeLarm, both individually and as President of the Columbia River Orchard Company, the Company which issued said bonds, it was represented by the said W. E. DeLarm individually and as President of said company that the bonds were worth twice their par value, and the said DeLarm further represented that the Washington Orchard Irrigation and Fruit Company, one of the defendants herein, was amply able to stand good for the guarantee which said company made on said bonds, which said guarantee is as follows, to-wit:

"In consideration of One Dollar, receipt whereof is hereby acknowledged by the Washington Orchard Irrigation and Fruit Company, a company organized and existing under and by virtue of the laws of the

State of South Dakota, having its principal place of business in Seattle, State of Washington, hereby guarantees payment of the principal and interest of the within bond according to the terms and tenor of said bond and the trust agreement mentioned therein.”

All of which was duly signed and authenticated by said Washington Orchard Irrigation and Fruit Company.

And attention was called by the said DeLarm to your orators to this provision in the said bonds:

“The payment of the principal and interest of said bonds is secured by mortgages on real estate deeds and other good, valid and solvent securities amounting to one hundred twenty-five (125%) per cent in face value of the sum named herein, deposited with the Oregon Washington Trust Company of Portland, Oregon, trustee, according to the terms of an agreement entered into by and between said trustee and the said Columbia River Orchard Company, which agreement is hereby made a part hereof.”

And the said W. E. DeLarm stated that the value of said bonds, instead of being 125% backed by securities and guarantee, they were worth two hundred per cent of the par value, all of which representations were and are false and were known to be false by said W. E. DeLarm and the other defendants herein alleged to be connected with him in said fraud.

## XXVIII.

Your orators allege the truth to be:

That the said W. E. DeLarm, with his associates, including all of the defendants herein, except possibly W. J. Burns, entered into a gigantic scheme to defraud your orators as well as all other persons with whom he and his associates dealt.

### XXIX.

That it is not true, as stated on the face of said bonds, that the principal and interest of said bonds was at any time secured as stated in said bonds, amounting to one hundred and twenty-five per cent as above alleged, or deposited with the Oregon and Washington Trust Company of Portland, Oregon, Trustee, that the statement was false and made for the express purpose of inducing innocent persons, including your orators and those in similar positions, to take the bonds, assuming that the representations on the face of the bonds, as well as those made by DeLarm, in dealing with your orators, as well as other persons, were true. That said bonds never had any value and were at all times, and are now, worthless, and of no value whatever, and the defendants knew the same at all the times herein alleged.

### XXX.

That the defendants, W. E. DeLarm, Edward C. Kilbourne, Charles A. Kilbourne, J. Alexander Wakefield, Cyrus F. Clapp, H. E. Lutz, Columbia River Orchard Company, Oregon Washington Trust Company, Washington Orchard Irrigation and Fruit Company, conspired and confederated together for the purpose of defrauding your orators and other

persons with whom they dealt; that the said defendant W. E. DeLarm dominated and controlled said corporations, made parties defendant hereto, as well as the individuals named herein as defendants, and they were all instruments in his hands or acting with him for the purpose of perpetrating the frauds which culminated in the transactions with which they have been connected with your orators, as well as other persons.

### XXXI.

That the said W. E. DeLarm, through his said confederates, formed the various corporations for the purpose of carrying on said scheme so as to cover up and prevent your orators as well as other persons with whom they dealt, from securing relief on account of said frauds, and that the said Edward C. Kilbourne and Charles A. Kilbourne to whom the said Edward C. Kilbourne conveyed the lands of your orators knew at all times all about the business that was being conducted by the said W. E. DeLarm, and all of the said corporations which are made defendants herein, and knew the whole scheme as well as W. E. DeLarm himself, and they were confederates with him in the business, and when the deeds were made and delivered to the said Edward C. Kilbourne he had knowledge of all the business in which the said W. E. DeLarm was engaged and was not at all an innocent purchaser, and acted with the said W. E. DeLarm to induce your orators to convey the land to him, as a trustee or agent for the said W. E.

DeLarm and his company.

That no consideration at all whatever passed between the said Edward C. Kilbourne and your orators, but the deeds were made to the said Edward C. Kilbourne with the express understanding that he was an agent and trustee of the said W. E. DeLarm with whom the original contract was made and was acting for him. And the said Charles A. Kilbourne knew, at the time said deed was executed and delivered to him, of all the transactions.

### XXXII.

That the defendant Charles A. Kilbourne, on September 27, 1911, as far as the records show in Gilliam County, Oregon, executed and delivered to one J. Alexander Wakefield a certain mortgage amounting to Seventeen Thousand Five Hundred Dollars, which said mortgage is recorded at page 543, Book L, of the Mortgage Records of Gilliam County, Oregon.

That afterwards, on September 28, 1911, and before said mortgage was recorded, the same was assigned by the said Wakefield to Cyrus F. Clapp and H. E. Lutz, the defendants herein, which said assignment is recorded at page 545, Book L, of the Mortgage Records of Gilliam County, Oregon.

### XXXIII.

Your orators say that the said J. Alexander Wakefield, at the time said mortgage was executed, had full knowledge of the transactions and the method of transactions of the defendants herein, as above alleged, including the said W. E. DeLarm, and all



of his associates and confederates, and the said J. Alexander Wakefield was a confederate with them and was in the conspiracy with them to carry out the fraud and the gigantic fraud which they finally did carry out against your orators, as well as against other persons, and that the said mortgage so given to the said J. Alexander Wakefield, was taken by him with all of such knowledge, and as a confederate with W. E. DeLarm and the other defendants herein and that the said Cyrus F. Clapp and H. E. Lutz knew the manner in which the said W. E. DeLarm and his confederates and associates as herein alleged were conducting their business, and knew that it was a fraud, and took the assignment of the mortgage with a large discount, large enough to put the said Cyrus F. Clapp on his guard as to whether the same was a legitimate transaction or a fraud.

#### XXXIV.

That on the 30th day of March, 1911, the said Charles A. Kilbourne executed a certain mortgage to one W. J. Burns on said real property described in this bill of complaint, amounting to Twenty Thousand Dollars, a copy of which said mortgage is hereto annexed, marked exhibit F and made a part hereof, and which said mortgage is recorded at pages 475 and 476, Volume L, Mortgage Records for Gilliam County, Oregon.

That said mortgage was afterwards by the said W. J. Burns transferred to the Edinburg and Pacific Coast Mortgage Agency, Limited.

Your orators say, in reference to said mortgage, that they have no knowledge, information or belief as to the validity of the said mortgage, or as to the knowledge of the said W. J. Burns, or his assent to the fraud, which the mortgagors as alleged herein were perpetrating or endeavoring to perpetrate, and therefore leave the said W. J. Burns or his assigns the Edinburg and Pacific Coast Mortgage Agency, Limited, to their proof.

### XXXV.

Your orators further say that when they entered into the transactions which are alleged herein, they did the same with the utmost good faith, that they transferred everything they owned in the world to the said W. E. DeLarm, and his associates, on the representations of him and his associates as to the value of the bonds which they were securing for their property.

That the property they owned at that time was the result of their life work and they believed what was represented to them as herein alleged, and thought that they were getting value received for their lands.

### XXXVI.

That all of the corporations herein enumerated with which DeLarm was connected, and which he caused to be organized for the purpose of carrying out his fraudulent schemes were at all the times herein alleged, and are now insolvent and not able to respond in damages or otherwise.

## XXXVII.

That the said W. E. DeLarm had a peculiar scheme of having property deeded to one person, or corporation, and having bonds issued by another, and, as shown in the transactions which he entered into and carried out with your orators, he caused the lands to be conveyed to individuals and bonds issued by a corporation which never received the lands at all.

The whole purpose of the scheme being to have an institution issue bonds which had no property or assets to answer for the bonds, and the said W. E. DeLarm and his associates and confederates have worked the same scheme in all transactions which they have had with other persons.

They caused various corporations to be organized for the express purpose of promoting the fraud and the intention was, in the very beginning when they started out to do business, to defraud all persons dealing with them, and steal and take away from them the property they had, without giving any compensation therefor, and all persons who dealt with them, or who were connected with them including all these defendants excepting possibly W. J. Burns and his assignee, knew all about the said transactions, were familiar with the same, acted in conjunction with the said DeLarm and his confederates and associates, being amongst them themselves, and had full knowledge of the method and manner in which the business was being done.



## XXXVIII.

That under the agreement entered into, the original agreement, exhibit A, the said DeLarm was to furnish a loan to the second parties mentioned in said agreement, and said loan was to be secured by the bonds delivered to the second parties in the ratio of Two Dollars to One Dollar. The loan was secured by said W. E. DeLarm, and through him and by him, and through his agents and principals as well, and bonds were put up to secure said loan to the amount of Six Thousand Dollars, but it was provided in said loan that the same was to be paid out of the interest and principal of said bonds; that the said DeLarm and his associates and confederates, have full control over said bonds, and that the personal property delivered to the said DeLarm and his associates was worth more than said loan, and your orators say that said bonds are now in the hands of said W. E. DeLarm, or his associates or confederates, and that the said personal property is worth twice as much as the money which was furnished by the said DeLarm, his associates and confederates, and your orators bring all their bonds, except the bonds which were put up for security of said loan, into court and tender them back to such of the defendants as may be entitled to the same, on the condition that the decree be made in accordance with the prayer made herein, and that said bonds are delivered to the Clerk of the Court along with this Bill of Complaint.

## XXXIX.

That your orators allege that the lands and premises are now planted in crop by the persons having possession of the same, and being, as far as your orators are informed and believe, the said Kilbournes, and it is necessary for the protection of your orators' interest, that the said Kilbourne or whoever may have possession of said premises be enjoined from disposing of said crops during the pendency of this suit.

## XL.

That your orators have no plain, speedy or adequate remedy at law, and are without protection except in the equity department of this Honorable Court.

WHEREFORE, Your orators pray that a temporary injunction issue out of this court, preventing the defendants and each of them from disposing of any of the crop growing on the lands and premises herein described, and from disposing of any of the personal property which your orators turned over to the said defendants during the pendency of this suit.

That your Honors may decree that said defendants and each of them have no interest or estate whatsoever in or to said lands or premises, and that the title of your orators is good and valid.

That the defendants, and each of them, be forever enjoined and restrained from asserting any claim whatever in and to said lands and premises adverse

to your orators, and that the original contract marked Exhibit A and all the deeds of conveyance marked exhibits B, C, D, and E, and the mortgages as set out herein, be set aside and held for naught, and that your orators be declared to be the owners in fee simple of the real property, lands and premises described in this bill of complaint, according to their respective interests as shown in the various deeds noted by said exhibits.

That the defendants who took possession, as herein alleged, of the personal property turned over by your orators be required to return said personal property to your orators, or the value thereof, and for such other and further relief as the equity of the case may require, and to your Honors may seem meet, together with the costs of this suit.

May it please your Honors to grant unto your orators a writ of subpoena directed to the said defendants, and each of them, commanding them on a day certain therein to be named, to appear and answer this bill (but not under oath, answer under oath being hereby waived), and to perform such order and decree in the premises as to the Court may seem meet and as may be required by the principles of equity and good conscience.

WOODCOCK & SMITH,  
Solicitors for Complainants.

EXHIBIT A.

---

This agreement, made and entered into this 4th day of March, A. D. 1911, by and between W. E. DeLarm, party of the first part, and W. L. Tobey, a widower, and F. L. Tobey and Ritta M. Tobey, his wife, parties of the second part, WITNESSETH:

That for and in consideration of the sum of One Dollar (\$1.00) in hand paid by the party of the first part to the parties of the second part, receipt whereof is hereby acknowledged, and of the mutual covenants and agreements to be kept and performed by each of the parties hereto, it is agreed:

1. The first party agrees to buy and the second parties agree to sell to the first party one certain wheat ranch located in Gilliam County, State of Oregon, and consisting of about 4350 acres, situated in Section 31, Township 1 N. range 21 east part of sections 1 and 12 in township 1 S. range 22 east, all of sections 7 and 8 and one half of section 9, a part of section 3, all of section 4, a part of section 5 and all of section 6 in Township 1 S range 22 east, and known as "Tobey Brothers Ranch," together with all the accessories, tools, and 36 head of horses and mules, in good working condition, to be selected in the manner hereinafter set forth, and all equipment and appurtenances belonging to said ranch, including the growing crop thereon; all of which is more fully described in the schedule, lists and map or diagram hereto attached and made a part hereof.

2. The purchase price to be paid by the first party to the second parties is and shall be the sum of One hundred and forty one thousand and No-100 dollars (\$141,000.00) which price shall be and is payment in full for all of the property described in and covered by this agreement, and shall be paid by the first party to the second party in the following manner:

One Thousand (\$1000) Dollars of said sum shall be paid by said first party at the time of the delivery of the deeds and bill of sale transferring title to the first party herein as provided in this agreement, which amount shall be paid in money.

One hundred and Forty thousand (\$140,000) Dollars of said purchase price shall be paid by the first party at the same time as the payment of the \$1,000 last above mentioned by delivering to the second parties Series A, Columbia River Orchard Company's seven per cent, twenty year, bonds, of the par value of \$140,000.00. Second parties hereby acknowledge receipt of bonds in this paragraph described of the value of \$5,000, which shall be deducted from the amount herein provided to be delivered to them.

The cleavage date of this contract shall be the date hereof. All expenses prior hereto to be borne by the seller and all expenses after this date to be borne by the purchaser. Complete possession to pass to the first party upon delivery of deeds and bill of sale by second party and payment of purchase price by first party as herein provided. Second party will



care for and manage said property until possession is delivered as herein provided.

3. The second parties agree to furnish to the first party complete certified abstracts of the real property herein described, showing good and sufficient title in all of said land in the second parties free and clear of all incumbrances, (a clear and unincumbered title to be delivered to the first party hereunder), on or before March 15th, 1911; Provided, however, that if the abstractor in Gilliam County is unable to furnish the abstracts properly certified so that they may be delivered within the time herein fixed, but same are delivered as quickly as possible to obtain them from said abstractor, such failure shall not be construed a breach of contract by second parties.

On or before March 18th, 1911, or within three days after the delivery of abstracts showing clear title in second parties, the second parties will deliver to first party good and sufficient warranty deeds conveying said real estate, and good and sufficient bills of sale conveying said personal property to said first party, and on said date and at the same time the first party will deliver to second parties the *monies* and bonds covering the purchase price as hereinbefore provided.

The horses and mules shall be selected by second party, he leaving an average lot of 36 head of horses and mules for first party.

First party will secure for second parties a loan on the bonds herein provided to be delivered to them,



as follows: \$3,000 at the time of the delivery of title hereunder, and \$3,000 on or before April 15th, 1911. Said loan to be secured by the bonds described herein at the ratio of \$200 in bond for each \$100 so loaned; interest to be 7% and loan to run until on or before February 1st, 1912.

This agreement to bind the parties hereto, their successors, assigns, administrators, executors and personal representatives.

In witness whereof the parties hereto have set their hands this day and year first above written.

(Signed) W. E. DeLARM, Seal.

“ W. L. TOBEY, Seal.

“ F. L. TOBEY, Seal.

“ RETTA M. TOBEY, Seal.

In presence of

Geo. V. Hodges.

---

EXHIBIT A.

---

PARTIAL INVENTORY OF FARM IMPLEMENTS, TOLLS, ETC.

- 1 Caterpillar, Engine Hobt.
- 1 Engine Gang Plow.
- 4 Gasoline Storage Tanks, 4-1000 Gal.
- 1 Holt Harvester.
- 9 Wagons and Equalizer hitch.
- 8 Wheat racks.
- 7 Gang plows 3 bottom 14-in. Moline.
- 1 Walking plow.

- 4 Wood Harrows.
- 3 Steel Harrows.
- 4 Drills.
- 1 Hodge Header.
- 1 Hay Rake.
- 1 Iron Roller.
- 2 Feed racks.
- 1 Water Tank.
- 1 Cook House.
- 1 Buggy.
- 1 Fanning Mill.
- 2 Header Beds.
- 4 Discs & Hitch.
- 1 Hay rack.
- 1 Blacksmith Outfit and Small tools.

#### HOUSEHOLD GOODS

- 25 or 26 set of harness.
- 9 horses.
- 27 mules.
- 60 chickens.
- 4 Hogs & 4 Pigs.
- 1 Headquarters house 7 rooms.
- Bunk House and Pump room.
- 1 Wind Mill.
- 1 4 horse power fairbanks morse Gasoline engine  
& pump Jack.
- 1 Deep well pump 2 $\frac{1}{4}$ -in. or 2 $\frac{1}{2}$ -in. cylinder 190  
ft. Deep.
- 1 Reservoir 35 to 40 M concrete and roofed.
- 1 Sled for Harvester.

- 1 shed for wagons 60 feet long.
  - 1 blacksmith shop.
  - 2 straw and stock barns.
  - 1 large granery.
  - 1 small granary.
  - 1 shed for pigs.
  - 1 chicken house.
  - 1 trough in pasture portable.
- Also all grain now on place.

---

EXHIBIT B.

---

KNOW ALL MEN BY THESE PRESENTS,  
That we, Frank L. Tobey and Retta M. Tobey his wife, both of Portland, State of Oregon, in consideration of Ten and no-100 Dollars to us paid by Edward C. Kilbourne, of Seattle, State of Washington, have bargained and sold, and by these presents do grant, bargain, sell and convey unto said Edward C. Kilbourne, his heirs and assigns, all the following bounded and described real property, situated in the County of Gilliam and State of Oregon:

Northwest quarter of Northwest quarter of Section Four (4), North half of Section Seven (7), all in Township One South, Range Twentytwo (22) East of the Willamette Meridian, containing 371 acres more or less,

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and also all their estate,

right, title and interest in and to the same, including dower and claim of dower.

TO HAVE AND TO HOLD the above described and granted premises unto the said Edward C. Kilbourne, his heirs and assigns forever. And Frank L. Tobey grantor above named do covenant to and with Edward C. Kilbourne, the above named grantee, his heirs and assigns, that he is lawfully seized in fee simple of the above granted premises, that the above granted premises are free from all incumbrances, and that he will and his heirs, executors and administrators shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

In Witness Whereof, the grantors above named have hereunto set their hands and seals this 15th day of March, 1911.

FRANK L. TOBEY (Seal)

RETTA M. TOBEY (Seal)

Signed, sealed and delivered in the

presence of us as witnesses:

EDWARD J. BRAZELL.

W. E. DeLARM.

State of Oregon,

County of Multnomah,—ss.

Be it Remembered, That on this 15th day of March, A. D. 1911, before me, the undersigned, a Notary Public in and for said County and State. personally appeared the within named Frank L. To-

bey and Retta M. Tobey, his wife, who are known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily.

In Testimony Whereof, I have hereunto set my hand and Notarial Seal the day and year last above written.

EDWARD J. BRAZELL,

(Notarial Seal)

Notary Public for Oregon.

---

EXHIBIT C.

KNOW ALL MEN BY THESE PRESENTS, That I, Augusta M. Tobey (widow), of Portland, of Multnomah County, State of Oregon, in consideration of Ten and no-100 Dollars to me paid by Edward C. Kilbourne, of Seattle, State of Washington, have bargained and sold, and by these presents do grant, bargain, sell and convey unto said Edward C. Kilbourne, his heirs and assigns, all the following bounded and described real property, situated in the County of Gilliam and State of Oregon: All of lots Three (3), Four (4), Five (5) and Six (6), of Section Three (3); and Lots One (1) and Two (2); and the South half of the Northeast quarter of Section Four (4); all in Township One (1) South Range Twenty-two (22) East of the Willamette Meridian, containing in all 343.36 acres, more or less, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in

anywise appertaining, and also all her estate, right, title and interest in and to the same, including dower and claim of dower.

To have and to hold the above described and granted premises unto the said Edward C. Kilbourne, his heirs and assigns forever. And Augusta M. Tobey, the grantor above named, do covenant to and with Edward C. Kilbourne the above named grantee his heirs and assigns that she is lawfully seized in fee simple of the above granted premises, that the above granted premises are free from all incumbrances and that she will and her heirs, executors and administrators shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, I the grantor above named, have hereunto set my hand and seal this 15th day of March, 1911.

AUGUSTA M. TOBEY (Seal)

Signed, sealed and delivered in the  
presence of us as witnesses:

EDWARD J. BRAZELL.

W. E. DeLARM.

State of Oregon,

County of Multnomah,—ss.

Be it Remembered, That on this 15th day of March, A. D. 1911, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Augusta M. To-



bey, who is known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that she executed the same freely and voluntarily.

In Testimony Whereof, I have hereunto set my hand and Notarial Seal the day and year last above written.

EDWARD J. BRAZELL,  
Notary Public for Oregon.

(Seal)

---

EXHIBIT D.

KNOW ALL MEN BY THESE PRESENTS,  
That I, William L. Tobey (unmarried), of Portland, State of Oregon, in consideration of Ten and no-100 Dollars, to me paid by Edward C. Kilbourne of Seattle, State of Washington, have bargained and sold, and by these presents do grant bargain, sell and convey unto said Edward C. Kilbourne his heirs and assigns, all the following bounded and described real property situated in the County of Gilliam and State of Oregon:

Northeast quarter (N E  $\frac{1}{4}$ ) of Section Twelve (12), Tn. 1 So. R. 21 East, Lots Three (3) and Four (4) and East Half (E $\frac{1}{2}$ ) of Southwest quarter of Section Seven (7), and Northeast quarter (NE $\frac{1}{4}$ ) of the Southwest quarter (SW $\frac{1}{4}$ ) of Section Four (4); and East half of the Northwest quarter (NW $\frac{1}{4}$ ) of Section Four (4), all in Township One South of Range Twenty-two (22) East of the Willamette Meridian, containing altogether 447.35 acres

more or less, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and also all his estate, right, title and interest in and to the same, including dower and claim of dower.

TO HAVE AND TO HOLD the above described and granted premises unto the said Edward C. Kilbourne his heirs and assigns forever. And William L. Tobey grantor above named do covenant to and with Edward C. Kilbourne the above named grantee his heirs and assigns, that he is lawfully seized in fee simple of the above granted premises, that the above granted premises are free from all incumbrances, and that he will and his heirs, executors and administrators shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

In Witness Whereof, the grantor above named, has hereunto set his hand and seal this 15th day of March, 1911.

WILLIAM L. TOBEY (Seal).

Signed, sealed and delivered in the  
presence of us as witnesses:

EDWARD J. BRAZELL.

W. E. DeLARM.

State of Oregon,

County of Multnomah,—ss.

Be it Remembered, That on this 15th day of March,  
A. D. 1911, before me, the undersigned, a Notary

Public in and for said County and State personally appeared the within named William L. Tobey who is known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily.

In Testimony Whereof, I have hereunto set my hand and Notarial Seal the day and year last above written.

EDWARD J. BRAZELL,

(Seal)

Notary Public for Oregon.

---

EXHIBIT E.

KNOW ALL MEN BY THESE PRESENTS, That we, William L. Tobey, unmarried, and Frank L. Tobey and Retta M. Tobey, his wife, all of Portland, of State of Oregon, in consideration of Ten and no-100 Dollars to us paid by Edward C. Kilbourne, of Seattle, State of Washington, have bargained and sold, and by these presents do grant, bargain, sell and convey unto said Edward C. Kilbourne, his heirs and assigns, all the following bounded and described real property situated in the County of Gilliam and State of Oregon:

East half of the Northwest quarter ( $E \frac{1}{2}$  of  $NW\frac{1}{4}$ ) and the Northwest quarter of Northwest quarter ( $NW\frac{1}{4}$  of  $NW\frac{1}{4}$ ); and East half of Southwest quarter ( $E\frac{1}{2}$  of  $SW\frac{1}{4}$ ); and Southwest quarter of Southwest quarter ( $SW\frac{1}{4}$  of  $SW\frac{1}{4}$ ) of Section Thirty-one (31), Township One North Range

Twenty-two (22) East of Willamette Meridian. East half of East half ( $E\frac{1}{2}$  of  $E\frac{1}{2}$ ) of Section One (1), Township One South Range Twenty-one (21) East of Willamette Meridian. Southwest quarter of Northwest quarter ( $SW\frac{1}{4}$  of  $NW\frac{1}{4}$ ), Northwest quarter of Southwest quarter ( $NW\frac{1}{4}$  of  $SW\frac{1}{4}$ ); South half of Southwest quarter ( $S\frac{1}{2}$  of  $SW\frac{1}{4}$ ); and Southeast quarter ( $SE\frac{1}{4}$ ) of Section Four (4), Northeast quarter of Northeast quarter ( $NE\frac{1}{4}$  of  $NE\frac{1}{4}$ ), West half of the Northeast quarter ( $W\frac{1}{2}$  of  $NE\frac{1}{4}$ ), Northwest quarter ( $NW\frac{1}{4}$ ); and South half ( $S\frac{1}{2}$ ) of Section Five (5), East half ( $E\frac{1}{2}$ ) and Northwest quarter ( $NW\frac{1}{4}$ ), and West half of the Southwest quarter ( $W\frac{1}{2}$  of  $SW\frac{1}{4}$ ) of Section Six (6), Southeast quarter ( $SE\frac{1}{4}$ ) of Section Seven (7), all of Section Eight (8), West half ( $W\frac{1}{2}$ ) of Section Nine (9), all in Township One (1) South Range Twenty-two (22) East of the Willamette Meridian, containing altogether 3,107.58 acres more or less, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all their estate, right, title and interest in and to the same, including dower and claim of dower.

To Have and to Hold the above described and granted premises unto the said Edward C. Kilbourne, his heirs and assigns forever. And William L. Tobey and Frank L. Tobey, grantors above named do covenant to and with Edward C. Kilbourne, the above named grantee his heirs and assigns that they

are lawfully seized in fee simple of the above granted premises, that the above granted premises are free from all incumbrances and that they will and their heirs, executors and administrators, shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

In Witness Whereof, the grantors above named have hereunto set their hands and seals this 15th day of March, 1911.

WILLIAM L. TOBEY (Seal)

FRANK L. TOBEY (Seal)

RETTA M. TOBEY (Seal)

Signed, sealed and delivered in the  
presence of us as witnesses:

EDWARD J. BRAZELL.

W. E. DeLARM.

State of Oregon,  
County of Multnomah,—ss.

Be it Remembered, That on this 15th day of March, A. D. 1911, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named William L. Tobey and Frank L. Tobey and Retta M. Tobey, his wife, who are known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily.

In Testimony Whereof, I have hereunto set my

hand and Notarial Seal the day and year last above written.

EDWARD J. BRAZELL,  
Notarial Seal.                      Notary Public for Oregon.

---

### EXHIBIT F.

This indenture of Mortgage, made this 27th day of March, A. D. 1911, between Charles A. Kilbourne (a widower) of the City of Seattle, State of Washington, party of the first part (hereinafter called "said mortgagor") and W. J. Burns, of the City of Portland, State of Oregon, party of the second part (hereinafter called "said mortgagee").

WITNESSETH, That said mortgagor, for and in consideration of the sum of Twenty Thousand 00-100 (\$20,000.00) Dollars gold coin of the United States to him paid by said mortgagee (the receipt whereof is hereby acknowledged) by these presents does grant, bargain, sell and convey unto the said mortgagee, his heirs, executors, administrators and assigns all the following described real property situated in the County of Gilliam, State of Oregon, to-wit:

The East half of the Northwest quarter, the East half of the Southwest quarter, and Lots One (1) and Four (4) of Section Thirty-one (31), in Township One (1) North of Range Twenty-two (22) East of the Willamette Meridian; the East half of the Northeast quarter and the East half of the Southeast quarter of Section One (1), and the Northeast quar-



ter of Section Twelve (12), in Township One (1) South of Range Twenty-one (21) East of the Willamette Meridian, Lots Three (3), Four (4), Five (5) and Six (6) of Section Three (3). All of fractional Section Four (4), the Northeast quarter of the Northeast quarter, the West half of the Northeast quarter, the Northwest quarter, the Southwest quarter and the Southeast quarter of Section Five (5), all of fractional Section Six (6), all of fractional Section Seven (7), all of Section Eight (8), and the Northwest quarter and the Southwest quarter of Section Nine (9), all in Township One (1) South of Range Twenty-two (22) East of the Willamette Meridian, containing in all Four Thousand three hundred and forty-nine 29-100 (4,349.29) acres more or less.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof. To have and to hold the above described real property, with the appurtenances unto the said mortgagee his heirs, executors, administrators and assigns forever. And the said mortgagor hereby covenants to and with the said mortgagee, that the said mortgagor is lawfully seized of the said real property and now has a valid and unincumbered fee simple title thereto, and that he will and his heirs, executors and administrators shall forever warrant and defend the same against all lawful claims and demands whatsoever.

The condition of this conveyance is such, that Whereas, said mortgagee has loaned to said mortgagor the full sum of Twenty Thousand 00-100 Dollars (\$20,000.00) in United States Gold Coin which is to be repaid in United States Gold Coin of the present standard of weight and fineness, together with interest thereon in like gold coin from date at the rate of eight per centum per annum and according to the tenor and effect of the following described promissory notes of even date herewith, being three principal notes and five interest notes, to-wit:

One principal note for \$5,000.00 due first November, 1913. One principal note for \$5,000.00 due 1st November, 1914. One principal note for \$10,000.00 due 1st November, 1915. One interest note for \$960.00 due first November, 1911. One interest note for \$1,600.00 due 1st November, 1912. One interest note for \$1,600.00 due 1st November, 1913. One interest note for \$1,200.00 due 1st November, 1914. One interest note for \$800.00 due 1st November, 1915. All of which said notes are executed and delivered by said mortgagor to said mortgagee and are payable to the order of the said mortgagee (on said loan of Twenty Thousand 00-100 Dollars) at the office of Balfour Guthrie Co., 350 California Street, San Francisco, California, with interest at the rate of eight per cent per annum after maturity and which said principal and interest notes with their terms and conditions are made parts of this mortgage. And the said mortgagor hereby covenants and agrees to

and with the said mortgagee as follows to-wit:

1. That he will pay each and all of said promissory notes, principal, interest, taxes and attorney's fees as specified therein, promptly when the same become due. 2. That he will keep up and maintain the buildings and improvements on said real property and will keep the same in a reasonable state of repair, and that he will not commit nor suffer waste upon said real property. 3. That he will pay all taxes, charges and assessments that may be lawfully imposed upon said real property by any public or quasi-public corporation, and will pay all incumbrances and liens of every kind on said real property, and the buildings and improvements now thereon or hereafter erected thereon, and that he will pay (ten days before the same become delinquent) all taxes which may be assessed in the State of Oregon upon this mortgage and the debt thereby secured or upon said promissory notes or any thereof, and that if he shall fail refuse or neglect to pay such taxes, assessments and liens, said mortgagee may pay the same. 4. That during the existence of this mortgage he will at his own expense keep the present buildings and improvements on said real property on any which may hereafter be erected thereon, insured against loss by fire to the extent of not less than four thousand 00-100 Dollars in some insurance company or companies as said mortgagee may select with loss, if any under such insurance payable to said mortgagee and will deliver the policies and renewals thereof to the said

mortgagee promptly after the issue thereof; and that if he shall fail, refuse or neglect to so insure said property or to keep the same so insured, the said mortgagee or otherwise, with loss thereunder payable to said mortgagee, and pay the premiums thereon.

5. That all sums of money so paid by said mortgagee as premiums on insurance and for taxes, assessments and liens as hereinbefore provided, shall at once become due and payable by said mortgagor, to said mortgagee and shall bear interest at the rate of eight per centum per annum from the day and days the same are paid by said mortgagee respectively; That said mortgagor covenants and agrees to repay the same to the said mortgagee together with the interest as aforesaid and that the same shall be added to the debt hereby secured and shall be a lien or liens on said mortgaged property, prior and superior to any and all other liens, created or attaching to said mortgaged property subsequent to the date of this mortgage. It is expressly understood and agreed however, that no payments so made by said mortgagee shall be a waiver of the rights of said mortgagee arising hereunder from the breach of any of the covenants or agreements herein on the part of said mortgagor.

Now therefore, if the said mortgagor shall pay said promissory notes and each of them in accordance with the terms thereof and the taxes as therein provided, and shall fully satisfy and comply with all covenants and agreements herein contained, then

this conveyance shall be void and of no effect; but otherwise to remain in full force and virtue as a mortgage to secure the payment of said promissory notes in accordance with the terms thereof, and all addition to said debt and the performance of the conditions, covenants and agreements herein provided, and as such shall be subject to foreclosure it being agreed that any failure to make any of the payments provided for in said notes or either or any of them or in this mortgage for a period of ten days after the same shall become due and payable or to perform any of the covenants or agreements herein contained shall forthwith or at any time thereafter give to said mortgagee the option to declare the whole amount due on said notes or unpaid thereon and under this mortgage at once due and payable and to foreclose this mortgage. It is further expressly covenanted and agreed that in the event of this mortgage being foreclosed, the said mortgagor shall pay such sum as the Court may adjudge reasonable as attorney's fees in this suit or action, and subject to this mortgage, the same shall become a lien upon said above described real property; which said fee shall be due when suit is begun, and shall be recovered whether final decree be entered or not, and not as a part of the costs of the commencement of this suit. Each and all of the covenants and agreements herein contained shall apply to and bind the heirs, executors, administrators and assigns of said mortgagor and of said mortgagee respectively.



In Witness Whereof, the said mortgagor has hereunto set his hand and seal this the day and year in this Indenture of Mortgage written.

CHARLES A. KILBOURNE (Seal).

Executed in the presence

us as witnesses:

JAMES CORMACK.

CHAS. BURNES.

State of Oregon,

County of Multnomah,—ss.

Be It Remembered, That on this 28th day of March, 1911, before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared the within named Charles A. Kilbourne (a widower) to me known to be the individual described in and who executed the within instrument of writing and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this the day and year in this my certificate written.

JAMES CORMACK,

(Seal)

Notary Public in and for the  
State of Oregon.

---

Know All Men By These Presents; That for and in consideration of One Dollar (\$1.00) to him in hand paid, the receipt whereof is hereby acknowledged W. J. Burns, of the City of Portland, State



of Oregon, has assigned, transferred and conveyed, and does hereby assign, transfer and convey unto the Edinburgh Pacific Coast Mortgage Agency, Limited (a corporation organized and existing under the laws of the United Kingdom of Great Britain and Ireland, with its registered office at Edinburgh, Scotland) the following described mortgage, together with the notes thereby secured, to-wit: Mortgage for Twenty Thousand Dollars (\$20,000.00) from Charles A. Kilbourne (a widower) to W. J. Burns dated 27th March, 1911, and recorded on page 475, Book L of Records of Mortgages of Gilliam County, State of Oregon, of which mortgage there now remains unpaid Twenty Thousand Dollars (\$20,000.00) principal, with interest thereon from 1st November, 1911.

To have and to hold unto the said Edinburgh Pacific Coast Mortgage Agency, Limited, its successors and assigns, the said mortgage and notes, with all the rights and privileges thereunto belonging or in anywise appertaining, including the right to recover all outlay for taxes and fire insurance premiums under the provisions of said mortgage.

In Witness Whereof, the said W. J. Burns has signed and sealed these presents this twenty first day of November, A. D. 1911.

W. J. BURNS (Seal).

In presence of

JAMES CORMACK.

ALEX. D. MACKENZIE.

State of Oregon,

County of Multnomah,—ss.

Be It Remembered, That on this 21st day of November, A. D. 1911, before me the undersigned a Notary Public in and for said County and State personally appeared the within named W. J. Burns who is known to me to be the identical person described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily for the purposes therein set out.

In Witness Whereof I have hereunto set my hand and seal the day and year last above written.

JAMES CORMACK,

(Seal)

Notary Public in and for  
State of Oregon.

State of Oregon,

County of Josephine,—ss.

I, William L. Tobey, being first duly sworn, depose and say that I am one of the Complainants in the above entitled suit; and that the foregoing Bill of Complaint is true as I verily believe.

WILLIAM L. TOBEY.

Subscribed and sworn to before me this 10 day of June, 1912.

CHARLES LADD,

(Notarial Seal)

Notary Public for  
the State of Oregon.

Filed June 14, 1912: A. M. CANNON, Clerk.

And afterwards, to-wit, on the 7th day of October, 1912, there was duly filed in said Court and cause, praecipe for appearance of Edward C. Kilbourne et. al., in words and figures as follows, to wit:

**[Entry of Appearance of Solicitors for Edward  
C. Kilbourne, et. al.]**

*In the District Court of the United States for the  
District of Oregon.*

No. 5611.

FRANK L. TOBEY et al.

*vs.*

W. E. DE LARM, EDWARD C. KILBOURNE,  
CHARLES E. KILBOURNE et al.

To the Clerk of the Above Entitled Court:

You will please enter our appearance as Solicitors in the above entitled cause for the Defendants Edward C. Kilbourne and Charles A. Kilbourne.

C. E. S. WOOD.

RICHARD W. MONTAGUE.

ISAAC D. HUNT.

ERSKINE WOOD.

Filed and entered October 7, 1912:

A. M. CANNON, Clerk.

And afterwards, to wit on the 14th day of July, 1913, there was duly filed in said Court and cause, an amended answer, of said Edward C. Kilbourne and Charles A. Kilbourne in words and figures as follows, to wit:

**[Amended Answer of Said Edward C. Kilbourne  
and Charles A. Kilbourne]**

*In the District Court of the United States for the  
District of Oregon.*

IN EQUITY.

FRANK L. TOBEY et al.

Complainants.

*vs.*

W. E. DE LARM, EDWARD C. KILBOURNE,  
CHARLES E. KILBOURNE et al.

Defendants.

AMENDED ANSWER.

The joint and several amended answer of Edward C. Kilbourne and Charles A. Kilbourne, defendants, to the bill of complaint of the above named complainants.

These defendants respectively reserving all manner of exceptions that may be had to the many errors, uncertainties and imperfections of the bill, come and make their amended answer thereto, or to so much thereof as they are advised is material to be answered, and say:

I.

Defendants deny any knowledge or information

sufficient to form a belief as to each and every allegation of Articles IX and X of the said bill, and therefore call for proof of the same.

## II.

Defendants deny any knowledge or information as to the agreement mentioned in Articles XI, XII, XIII, XIV, XV, and XVI, of said bill, except such knowledge as they have gained from a purported copy of said agreement and from an inspection of the original of said agreement, which is now on file in this Court, and reserve the right to introduce proof concerning the same, and now call for proof of all the facts alleged other than the existence of such document.

## III.

Defendants deny that the parties of the second part in said agreement executed a bill of sale in favor of W. E. DeLarm, as alleged in Article XXI. of said bill, but allege the truth to be that said bill of sale was executed in favor of defendant Edward C. Kilbourne.

## IV.

Answering to Article XXII of said bill, defendants deny that the real property therein mentioned was at the time of said agreement of the reasonable value of \$141,000.00, or that said real property is worth that much and more now, but allege the truth to be that said real property at said time was of the reasonable value of to wit, \$52,000.00, and no more. and at the present time it is worth, by reason of the

additional improvements which these defendants have put upon said land and the better cultivation said defendants have given said land, the sum of to wit, \$60,000.00, and no more.

#### V.

Answering to Article XXIII of said bill, defendants deny that the personal property therein mentioned was at the time it was turned over, as therein alleged, of the value of \$13,500.00 to \$14,000.00, or that it would be worth that much and more at the present time if the same could be redelivered to the complainants herein, but allege the truth to be that said personal property was at the time it was turned over as alleged, of the reasonable value of \$9,500.00, and no more, and that since that time it has depreciated in value twenty per cent.

#### VI.

Answering Article XXIV of said bill, defendants deny any knowledge or information sufficient to form a belief as to the allegations, or any of them, therein, and therefore call for proof of the same.

#### VII.

Answering Article XXV of said bill, defendants deny any knowledge or information sufficient to form a belief as to any of the matters therein alleged, except that defendants admit that Edward C. Kilbourne was with the said DeLarm examining the said property, and defendants allege the truth to be that when said Edward C. Kilbourne was with the said DeLarm examining said property, he was acting in



the capacity of an irrigation and engineering expert employed by the said DeLarm, to give his opinion on said property, and particularly as to its adaptability to irrigation, and that neither at that time nor ever, did he know the consideration that passed from said DeLarm to complainants for said property, except that long after said examination was made and some time after the properties herein mentioned were deeded to him in settlement as hereinafter alleged he received what purported to be a copy of the agreement referred to in Article II hereof, and heard that part of the purchase price paid by DeLarm for said property was \$140,000.00 in Columbia River Orchard Company's bonds; and defendants allege the truth to be that at the time said examination was made said Edward C. Kilbourne neither did nor said anything to lead complainants or any of them to believe that he was associated in business with the said DeLarm or with the Columbia River Orchard Company or other corporations or associates of the said DeLarm, that neither of defendants was at any time so interested and did not know anything about the dealings between said DeLarm and the complainants, and allege that said Edward C. Kilbourne never was associated with said DeLarm or with the Columbia River Orchard Company or other corporations or associates of the said DeLarm in business or otherwise, and except as herein admitted allege that neither of defendants had any notice or knowledge of any alleged frauds at any time other than the allegations of this

bill, and defendants call for proof of the allegations of Article XXV.

### VIII.

Answering Article XXVII of said bill, defendants deny any knowledge or information sufficient to form a belief as to any and all of the matters therein alleged, except the allegation that the alleged false representations made by the said DeLarm were known to be false by these defendants, which these defendants specifically deny, and allege the truth to be that at none of the times referred to in said bill or at any time did they or either of them know anything as to what representations were made by the said DeLarm as to the said bonds, or know anything whatever of any alleged fraud or have any notice thereof, and that they believed at the time the agreement hereinbefore mentioned was made and at the time the deeds to said property were executed and delivered to said Edward C. Kilbourne, and for some time thereafter, that the bonds of the Columbia River Orchard Company had a substantial value and that if the Wahluke Irrigation Project was carried to completion, as seemed likely, that the said bonds would be worth their face value, and except as herein expressly admitted, defendants call for proof of the allegations of Article XXVII of the bill.

### IX.

Defendants deny each and every allegation of Article XXVIII of the bill.

## X.

Answering Article XXIX, defendants deny any knowledge or information sufficient to form a belief as to the truth or falsity of the statement on the face of the bonds, or as to the purpose of said statement, and call for proof of same, and defendants specifically deny that said bonds have never had any value, or were at all times and are now worthless, but allege the truth to be that said bonds had a substantial value, as before alleged, and even now have some value, based on the fact that they are the first mortgage bonds of the Wahluke Irrigation Project, which is now practically completed and is a meritorious project, and that efforts are now being made by the bondholders to reorganize the said project and to pay off the liens for labor and materials now upon the irrigation works of said project and that if this effort is successful these bonds will still be of considerable value.

## XI.

Defendants deny that they knew, as alleged in said Article XXIX, that said bonds at no time had any value or were or are now valueless, and as before deny that they or either of them at any time ever knew or had notice of any of the alleged frauds stated in the bill.

## XII.

Answering Article XXX, the said defendants deny that they or either of them conspired or confederated together with the persons therein named, or any

or either of them, or with any other person or persons, for the purpose of defrauding any complainants, or any person or persons whomsoever; and deny that the said W. E. DeLarm dominated and controlled them, or either of them, or that they were instruments in his hands, or acted with him for the purpose of perpetrating these alleged frauds, or any frauds, whatsoever.

### XIII.

Defendants deny each and every allegation in Article XXXI of said bill except the allegation as to the purposes for which the said DeLarm formed the said corporations, as to which they deny any knowledge or information sufficient to form a belief and call for proof of the same.

### XIV.

And defendants allege the truth to be that heretofore, to wit, in the year 1901, the defendant Charles A. Kilbourne and Walter G. Clark caused to be incorporated the Kilbourne & Clark Company, the principal business of which was that of wholesale dealers in electrical supplies and machinery and as engineering expert and contractor for the construction of electric lighting, power and irrigation plants and the sale of allied machinery.

### XV.

That the defendant Edward C. Kilbourne became a principal stockholder and associated with the management of said Kilbourne & Clark Company in the year 1905, and that in the course of its regular bus-

iness the said company has furnished the machinery for or constructed a great many irrigation pumping plants, including a number of such pumping plants on the Columbia River.

## XVI.

That in the regular course of the business of said company the defendant W. E. DeLarm came to the officers of the said company, to wit, to the defendants Charles A. Kilbourne and Edward C. Kilbourne, toward the end of the year 1909, and represented to them that he was president of the Columbia River Orchard Company, a corporation, and that said corporation had an irrigation project near Wahluke, Washington, on the Columbia River, which the said company intended to develop by pumping water from the Columbia River, and requested them to submit plans and estimates for a pumping station in connection with such project. The said Kilbourne & Clark Company prepared and submitted said plans and estimates, and subsequently, to wit, on January 18, 1910, entered into a contract with the said Columbia River Orchard Company to construct for said last named company a pumping plant for the said Wahluke project; before doing so, however, it requested of the said DeLarm a financial statement and some evidence of the credit of himself and of his said corporation, to-wit, Columbia River Orchard Company. The said DeLarm was, at that time, a perfect stranger to the said Charles A. Kilbourne and Edward C. Kilbourne and they were unwilling



to contract with him without this evidence from him as to responsibility. Accordingly he submitted a statement showing assets of the Columbia River Orchard Company, aggregating, to-wit \$900,000.00, against which was a total liability of, to-wit \$300,000.00, being a bond issue which was represented by the said DeLarm as being as good as sold in the East. On this showing, and having faith in the said DeLarm, the said Kilbourne & Clark Company contracted with his said corporation, to wit Columbia River Orchard Company, to build the said pumping plant, and work was commenced under said contract, which work later had to be rushed day and night on account of the rapid rise of the Columbia River. The said Kilbourne & Clark Company sublet a part of the said contract to the Puget Sound Bridge & Dredging Company, which is one of the largest and most responsible contracting companies in the Pacific Northwest.

## XVII.

The sale of the said issue of \$300,000.00 of bonds was not made in the East as expected by the said DeLarm, and after the account of said Kilbourne & Clark Company with the said Columbia River Orchard Company for work done under said contract had reached a total of more than \$43,000.00 the said Kilbourne & Clark Company stopped work thereunder, pending a settlement. Work was thus stopped on, to wit July 13th, 1910.



## XVIII.

While matters were thus suspended the said DeLarm came to said Kilbourne & Clark Company, to wit February . . , 1911, and requested the defendant Edward C. Kilbourne to go with him to Gilliam County, Oregon, to examine a ranch which the said DeLarm said that he had purchased there and upon which he wished an expert opinion as to the quality of the land and particularly as to its adaptability to irrigation. Upon the said DeLarm agreeing to pay all expenses, which he did, the defendant Edward C. Kilbourne accompanied the said DeLarm to Portland, Oregon, where the two were met by . . . . . Tobey, one of the complainants herein, and the last named three persons thereupon went to Olex, in Gilliam County, Oregon, where the said Tobey showed to the said DeLarm and the said Edward C. Kilbourne the said ranch, and the said DeLarm and Edward C. Kilbourne examined the same. The said Edward C. Kilbourne, in making such examination, was employed, as hereinbefore alleged, only as consulting engineer, and had no interest whatever in the property except as an expert hired to give his opinion thereon, and did not know then and never did know anything of the deal between the said DeLarm and the complainants, or of DeLarm's affairs or representations as set up in the bill of complaint herein, or otherwise, except as hereinbefore alleged in Article VII hereof. During said examination of said ranch no details of the transaction between De-

Larm and the complainants were discussed in the presence of the defendant Edward C. Kilbourne, nor at any time thereafter; the said defendant Edward C. Kilbourne acting as consulting engineer gave his opinion to the said DeLarm, which was in general favorable to the said property reported on, provided water could be secured with which to irrigate the same, and the defendant Edward C. Kilbourne then returned to Seattle, his place of business.

### XIX.

Afterward, to wit March . . ., 1911, the said DeLarm informed these defendants that he could not at that time pay the said claim of the Kilbourne & Clark Company for, to wit \$43,000.00 in cash, and he proposed that he turn over to these defendants the said ranch which the said Edward C. Kilbourne had examined as aforesaid, together with certain ranch equipment, in settlement of said claim and in consideration of the said Kilbourne & Clark Company agreeing to complete said irrigation project and if requested so to do within one year to construct an additional unit to said pumping plant at an approximate cost of, to wit ten thousand dollars (\$10,000.00). The said Kilbourne & Clark Company was at that time ceasing from active business operations, and therefore the said defendants Charles A. Kilbourne and Edward C. Kilbourne agreed, as individuals, to accept the said ranch and its accompanying equipment, and in payment therefor to assume the debt of, to-wit \$43,000.00, which DeLarm's corporation owed

the Kilbourne & Clark Company as aforesaid, and to complete the said pumping plant for the Wahluke Irrigation Project and to install an additional unit, as aforesaid, if requested so to do within one year; but it was an express condition of said agreement and in part consideration therefor, that the said DeLarm would furnish seventy-five hundred dollars (\$7,500) in cash to be used in securing the release of a lien for to wit twenty-five thousand dollars (\$25,000) which the said Puget Sound Bridge & Dredging Company had filed upon the said Wahluke Irrigation Pumping Plant for work done by it as sub-contractor thereon, and that the said DeLarm should pay off the claim of the Moran Company amounting to, to wit twenty-two hundred and fifty dollars (\$2,250), which claim was also for work done on said plant as sub-contractor; the said Kilbourne & Clark Company as original contractor for this work being liable to the said sub-contractor for these debts.

## XX.

These defendants made said agreement with the said DeLarm and accepted the said ranch in settlement, as aforesaid, without any knowledge or notice of any of the alleged frauds in the bill stated or any fraud and only after much hesitation and reluctance, for the reason that it tied up their capital and compelled them practically to go out of the engineering-contracting business and engage in the business of ranching.

## XXI.

After the making of said agreement of settlement, as aforesaid, these defendants continued the work on said irrigation plant and expended thereon the further sum of, to wit seventeen thousand dollars (\$17,000), and on or before, to wit June 11, 1911 performed every part of said agreement of settlement, except such as they were released from performing as hereinafter alleged, and all without any knowledge, notice or suspicion of any of the frauds alleged in the bill.

## XXII.

Defendants believed that the claim of the said Kilbourne & Clark Company and of the Puget Sound Bridge & Dredging Company were the principal demands upon the said Columbia River Orchard Company or DeLarm for ready cash, and with these eliminated in the manner proposed by the said agreement of settlement, the said defendants saw no obstacle in the way of the Columbia River Orchard Company's Wahluke enterprise being a success, and so continued in said belief till the said Company went finally into the hands of a receiver, to wit February, 1912.

## XXIII.

Defendants further allege that in order to satisfy the said claim of Puget Sound Bridge and Dredging Company of, to wit twenty-five thousand dollars (\$25,000), they pledged to said company their individual holdings of real estate, but that the said De-

Larm never furnished the said sum of, to wit seventy-five hundred dollars (\$7,500) in cash, nor paid off the said Moran claim of, to wit twenty-two hundred and fifty dollars (\$2,250) as agreed, and that the said claims of \$7,500 and \$2,250, together with interest and attorney's fees now amount to over eleven thousand dollars (\$11,000), which latter sum is still due from said DeLarm's said corporation, the Columbia River Orchard Company, to these defendants.

#### XXIV.

Defendants further allege that in order to carry on the construction of the said Wahluke Irrigation Plant and some other construction work in which the said Kilbourne & Clarke Company was then engaged, the defendant Charles A. Kilbourne had advanced to the said company the sum of, to wit more than seventy-two thousand dollars (\$72,000), and after said ranch and accompanying equipment had been, at the request of the said DeLarm, transferred by the complainants to the defendant Edward C. Kilbourne, on to wit March 15th, 1911, the said Edward C. Kilbourne on, to wit March 25, 1911, transferred the same to the defendant Charles A. Kilbourne in part settlement of the said advances of, to wit seventy-two thousand dollars (\$72,000), all without any knowledge or notice of any fraud alleged in the bill or of any fraud.

#### XXV.

Defendants deny that no consideration passed between the said Edward C. Kilbourne and complain-



ants for the said ranch and equipment as alleged in Article XXXI of said bill of complaint, and allege the truth to be that the said W. E. DeLarm, at the time the complainants transferred the legal title to said lands and equipment to the said Edward C. Kilbourne, was the holder of the equitable title thereto by reason of the contract of sale, copy of which is attached to said bill of complaint and marked Exhibit "A," and that the said agreement between the said DeLarm and the said defendants was good and sufficient consideration for said transfer, which agreement was fully performed as herein stated by the defendants in good faith, without fraud or knowledge or notice of any fraud against complainants or any one.

## XXVI.

Defendants allege that the mortgage for seventeen thousand five hundred dollars (\$17,500) referred to in Article XXXII of the bill of complaint, was given by the defendant Charles A. Kilbourne in consideration of an agreement on the part of the mortgagee to pay to the said Charles A. Kilbourne the sum of seventy-five hundred dollars (\$7500), and to pay to the said W. E. DeLarm as president of the Columbia River Orchard Company the sum of ten thousand dollars (\$10,000), and that this sum of ten thousand dollars (\$10,000) so to be paid to the said DeLarm was the consideration for said Columbia River Orchard Company releasing these defendants from their obligation to install the additional unit



as aforesaid and from their obligation to complete the intake of the said irrigation plant, the completion of which intake was rendered impracticable by high water and was of minor importance, and that neither the said mortgagee nor his assigns have ever paid to the said Charles A. Kilbourne the said sum of seventy-five hundred dollars (\$7500) and these defendants were ignorant and are now ignorant, except as it appeared from the testimony in the bankruptcy proceedings of the Washington Orchard Irrigation and Fruit Company, as to what discount the said W. E. DeLarm agreed to allow or allowed on the said sum of ten thousand dollars (\$10,000) agreed to be paid to him by the said mortgagee, and that the said sum of seventy-five hundred dollars (\$7500) was intended by the said Charles A. Kilbourne to be used in part payment of the claim of the Puget Sound Bridge & Dredging Company before mentioned.

## XXVII.

Answering Article XXXIII of said bill of complaint, defendants deny any knowledge or information sufficient to form a belief as to the allegations therein contained, except the allegations that J. Alexander Wakefield was a confederate with these defendants in a conspiracy to defraud and that said Wakefield and Cyrus F. Clapp and H. E. Lutz knew that the business conducted by these defendants was a fraud, which allegations these defendants specifically deny and call for proof of the same and allege

the truth to be that neither they nor either of them was a party to any conspiracy or any fraud whatsoever, or had at any time any knowledge or notice of such fraud or any fraud.

### XXVIII.

Answering Article XXXIV of said bill of complaint, defendants deny that they or either of them were perpetrating or endeavoring to perpetrate any fraud whatever either in taking the title to said land and the accompanying equipment as aforesaid, or in mortgaging the same, or in doing anything else whatsoever.

### XXIX.

Answering Article XXXV of said bill of complaint defendants deny any knowledge or information as to the good faith in which the complainants entered into the transactions alleged in said bill of complaint, or that complainants transferred everything they owned in the world to the said W. E. DeLarm, or as to what representations the said W. E. DeLarm or his associates made to them on any matter whatsoever, or that the property they owned at that time was the result of their life work, or as to what they believed as to the alleged representations, or thought as to the value of the consideration they were getting for their lands; and call for proof of the same; and defendants allege the truth to be that neither they nor either of them ever made any representations whatsoever to the said complainants, and were never the associates of the said W. E. DeLarm.

or interested in his corporations, except in the manner hereinbefore alleged; and the said defendants are informed and believe and therefore allege that the complainants did not transfer everything they owned in the world to the said W. E. DeLarm, but that at that time they, or some of them, owned valuable Portland property which they still own.

### XXX.

Answering Article XXXVI of the said bill of complaint, defendants deny any knowledge or information as to the allegations therein contained, except that the defendants are informed and believe and therefore allege that the Columbia River Orchard Company is not insolvent, although it is in the hands of a receiver and call for proof of each and every allegation of said Article.

### XXXI.

Answering Article XXXVII of said bill of complaint defendants deny any information or knowledge sufficient to form a belief as to the matters therein alleged, except the allegation that these defendants were associated in any way with the said W. E. DeLarm or his corporations, and that these defendants knew about the said fraudulent transactions of the said W. E. DeLarm or were familiar with them or acted in conjunction with him or his confederates or associates, or had full knowledge or any knowledge whatever of the method or manner in which the said business was done; all of which allegations these defendants specifically deny, and allege

the truth to be that they were not nor was either of them at any time associated or connected with the said W. E. DeLarm or any of his companies or corporations or associates, except as hereinbefore alleged, to wit, as contracting engineers and constructors of the said irrigation plant, and defendants call for proof of the allegations of said Article XXXVII.

### XXXII.

These defendants deny any knowledge or information as to each and every allegation contained in Article XXXVIII of the said bill of complaint and call for proof of the same.

### XXXIII.

Answering Article XXXIX of the said bill of complaint these defendants deny that it is necessary, for the protection of complainants' interest, that an injunction issue to prevent these defendants, or whoever is in possession of the crops growing on said land, from disposing of the same.

### XXXIV.

These defendants allege the truth to be that the said land lies in the semi-arid belt of the State of Oregon, in a district which has had either total crop failures or very light crops during the past four or five years, except the year 1912; and that at the time the complainants transferred said lands and the accompanying equipment for said irrigation bonds and other consideration as alleged in the bill of complaint, the land owners in the district in which said

lands lie were very discouraged on account of the repeated crop failure, and many of them were selling out and leaving the country, and land in this vicinity was very cheap, and that at the same time irrigation bonds were looked upon as a good investment; and defendants are informed and believe and therefore allege the truth to be that before the said complainants had exchanged their said property for said bonds as aforesaid, they carefully investigated the value of said bonds and employed a skilled attorney to aid them in such investigation, and ——— Tobey made a special trip to Seattle in pursuance of such investigation, and after complainants had bought the said bonds from the said DeLarm by transferring said property, they or some of them bought more bonds of the same series from other parties in order to obtain control of the entire issue of said bonds, and the complainants Frank L. Tobey and William L. Tobey are not guileless farmers, but are merchants who have for many years been engaged in the general merchandise business in Gilliam County, Oregon, and are hard-headed, shrewd business men, quite able to look out for their affairs, and for the affairs of the other complainants.

#### XXXV.

And defendants and each of them allege the truth to be that relying upon the acquiescence of the complainants in consenting to the transfer of the legal title to the lands described in the bill direct from themselves to defendants, and relying on the



close relation which seemed to exist between the complainants and said DeLarm, and relying on the statements of the complainants to the defendants that DeLarm had told them he was conveying their (complainants') lands to the defendants in payment for the services of the Kilbourne & Clark Company, and for the completion of the pumping plant at Wahluke, and that they, the complainants, were well advised in the premises, the defendants received said deeds direct from the complainants and assumed and paid the bill due from DeLarm to the Kilbourne & Clark Company, to wit \$43,000.00, and completed the pumping plant at Wahluke at a cost of to wit, \$17,000.00, and paid the said DeLarm the sum of to wit, \$10,000.00 to be released from their obligation to complete the second unit of said pumping plant, as more fully heretofore described in this amended answer; and to execute said work and make such payment and to pay the Puget Sound Bridge and Dredge Company and Moran Bros., the total sum, to wit, \$9750.00, as more fully hereinbefore set forth, mortgaged said lands for the sum of to wit \$37,500.00, as more fully hereinbefore set forth; and relying on the representations of the complainants that they knew of the dealings between DeLarm and these defendants in the matter of the conveyance of said lands, as in this amended answer set forth, these defendants have invested in necessary machinery, equipment, etc., for the farming of said lands, the sum of to wit \$13,000.00, which will be a loss to these



defendants if deprived of the said lands; and in order to make cultivation profitable and not a loss have added to said lands by the purchase of other lands necessary for the cultivation of either or any of said lands at a profit and have paid for said added lands the sum of to wit \$23,000.00, and unless the entire tract can be operated as a whole the said investment will be a loss to these defendants.

Wherefore, and by reason of the foregoing, the complainants and each of them ought to be estopped to maintain this bill in a court of equity; and these defendants pray that the bill of complaint filed herein be dismissed and for a decree that neither complainants nor any of them have any right, title or interest in the said real estate or personal property transferred by the complainants to Edward C. Kilbourne as alleged in said bill of complaint, and by him transferred to said Charles A. Kilbourne, and that the title of the said Charles A. Kilbourne to said property is valid and complete, and that these defendants may recover their costs and disbursements in this suit, and for such other, further and different relief as may seem equitable in the premises.

EDWARD C. KILBOURNE,

CHARLES A. KILBOURNE.

WOOD, MONTAGUE & HUNT,

C. E. S. Wood, Richard W. Montague, Isaac D. Hunt, Erskine Wood,

Solicitors for Defendants, Edward C. Kilbourne and Charles A. Kilbourne.

United States of America,  
District of Washington—ss:

I, Edward C. Kilbourne, and I, Charles A. Kilbourne, being first duly sworn, each for myself and not one for the other, say on my oath that I have read the foregoing amended answer and know its contents, and that what is therein contained as far as it concerns my own act and deed is true of my own knowledge, and that what relates to the act and deed of any other person or persons I believe to be true.

CHARLES A. KILBOURNE,  
EDWARD C. KILBOURNE.

Sworn to before me this 11th day of June, 1913.  
(Notarial Seal) J. W. JACKSON.

Notary Public in and for the State of Washington,  
residing at Seattle. My commission expires October  
23, 1914.

State of Oregon,  
County of Multnomah,—ss

I, Erskine Wood, one of the attorneys for the defendants Kilbourne in the above entitled cause, do hereby certify that I have compared the foregoing copy of amended answer with the original thereof, and that the same is a full, true and correct copy of such original, and of the whole thereof.

ERSKINE WOOD,

Of Solicitors, Defendant Kilbourne

Filed July 14, 1913.

A. M. CANNON, Clerk.

And afterwards, to wit, on the 11th day of August, 1913, there was duly filed in said Court and cause opinion in words and figures as follows, to wit:

[Opinion]

*In the District Court of the United States for the  
District of Oregon.*

FRANK L. TOBEY et al.

Complainants.

vs.

W. E. DE LARM, EDWARD C. KILBOURNE.

CHARLES E. KILBOURNE et al.

Defendants.

MEMORANDUM ON MERITS.

BEAN, District Judge:

This is a suit to set aside conveyances of real and personal property made by the plaintiffs to the defendants Kilbourne at the request of the defendant DeLarm, the original purchaser thereof, on the ground that the purchase by DeLarm was induced by fraud and deceit.

It is unnecessary to allude to the testimony in detail. It is sufficient that in March, 1911, DeLarm contracted to purchase the property in question from plaintiffs and pay therefor in bonds of the Columbia River Orchards Company, of which company he was the president and general manager. Before the deeds had been executed and delivered to DeLarm he sold the property to the defendants Kilbourne in consideration that, as individuals they would assume

and pay an indebtedness of about \$43,000 due the Kilbourne & Clark Company on an unfinished contract for the construction of a pumping plant for the Orchards Company and would complete such contract and install an additional unit. The deed was thereupon, at DeLarm's request and by plaintiff's consent, made direct to the defendant E. C. Kilbourne, who a few days later, conveyed it to the defendant Charles A. Kilbourne in payment of an indebtedness of \$75,000 owed him for money theretofore advanced to the Kilbourne & Clark Company. It clearly appears that the plaintiffs, in making the sale to DeLarm, relief upon the representations of DeLarm and one Hodges as to the securities behind the bonds of the Orchards Company, given in exchange for the property, and that such representations were false and fraudulent, and that the bonds were in fact of no substantial value. But the evidence shows that the defendants Kilbourne were not parties to such fraud and knew nothing about it until long after they had paid the full consideration agreed by them to be paid for the property. They were not officers or agents of the Orchards Company and did not know the amount of bonds issued or contemplated to be issued by it, or the securities behind such bonds, or the truth or falsity of any representations made by DeLarm or Hodges concerning the same, or the details of the transactions between the plaintiffs and DeLarm. They merely represented a creditor of the Orchards Company, and were endeavoring in

good faith to obtain payment of an indebtedness due from such company to the Kilbourne & Clark Company, of which company there were the officers and managers. In compliance with their agreement with DeLarm, they assumed and paid a debt of about \$43,000 due the Kilbourne & Clark Company from the Orchards Company, completed the pumping plant at an expense of sixteen or seventeen thousand dollars, paid DeLarm ten thousand dollars, which was a reasonable sum, to be released from the stipulation to construct the additional unit, before they had any notice or knowledge of the alleged fraud. In fact, during all this time the bonds of the Orchards Company were generally regarded as valid securities and were being repeatedly exchanged at par for property in Seattle and elsewhere. The defendants thus paid for the property an amount not so disproportionate to its value as to amount to a fraud, in good faith and without notice or knowledge that the property had been obtained by DeLarm from the plaintiffs through fraud and deceit. The fact that of the money used for such purpose, \$37,500 was borrowed by defendants and secured by mortgage on the property in controversy does not alter the situation. They are primarily obligated for the payment of such money, and if parties to the fraud, or if they had knowledge thereof at the time they took the conveyance, they would probably be required to take care of the indebtedness from their private funds, thus relieving the mortgaged property from



the lien. For the purpose of this case, therefore, they stand in the same position in regard to such money as if they borrowed it on their individual credit, or obtained it from other sources. They are therefore in fact innocent purchasers for value and without notice.

It is claimed, however, that they are not entitled to the protection of such purchasers because the conveyance of the property was made by the plaintiffs direct to them. One who purchases merely an equity cannot be a bona fide purchaser, for the protection extended by a court of equity to such purchaser belongs only to the purchaser of the legal estate. (*Butler vs. Douglas*, 3 Fed. 613. *U. S. vs. Detroit T. & L. Co.*, 131 Fed. 668). But the Kilbournes did not purchase DeLarm's interest in the contract with the plaintiffs, or succeed to his rights thereunder, nor is their defense based on such contract. They purchased the legal estate and it has been conveyed to them, and the fact that the deeds were made to them direct by the plaintiffs, and not to DeLarm and by him to them, does not, in my judgment, deprive them of the right of a bona fide purchaser.

It has been held that one who in good faith for a consideration and without notice accepts a conveyance by deed executed and delivered to his grantor by a prior owner in which the name of the grantee is left blank becomes a purchaser in good faith and acquires a good title as against the prior owner, although the deed was obtained by fraud in the first



place. (133 Ia. 456, 76 Ia. 529, 145 Ia. 591). In the cases cited, the original grantor was not present and acquiescing when the deeds were filled in with the names of the innocent third persons. Certainly the case is stronger in favor of the purchaser where, as here, the grantor was present and consented to the deed being made direct to such purchaser.

In *Torrey vs. Buck* (2 N. J. Equity, 366) so much relief upon by plaintiffs, the facts are not very clearly stated in the opinion. Enough is stated, however, to indicate that the person to whom the land was conveyed at the request of Buck was not in fact, a purchaser in good faith.

In *Bonnell vs. Burton* (61 Ore. 429) the defense of innocent purchaser was not made or considered.

It follows therefore that the bill should be dismissed and it is so ordered.

August 11, 1913.

Filed August 11, 1913.

A. M. CANNON, Clerk.

And afterwards, to wit, on Monday, the 11th day of August, 1913, the same being the 31st Judicial day of the regular July term of said Court; Present: the Honorable R. S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to wit:

[Final Decree]

*In the District Court of the United States for the  
District of Oregon.*

FRANK L. TOBEY et al.

Complainants.

*vs.*

W. E. DE LARM, EDWARD C. KILBOURNE,  
CHARLES E. KILBOURNE et al.

Defendants.

DECREE.

It is hereby ordered, adjudged and decreed that complainants' bill be dismissed for the reasons stated in the opinion this day rendered, and that defendants Edward C. Kilbourne and Charles A. Kilbourne recover their costs and disbursements herein taxed at \$190.50.

R. S. BEAN, Judge.

Dated Portland, Oregon, August 11th, 1913.

Filed August 11, 1913.

A. M. CANNON, Clerk.

And afterwards, to wit, on the 7th day of February, 1914, there was duly filed in said Court and cause, a petition for appeal, in words and figures as follows, to wit:

[**Petition for Allowance of Appeal**]

*In the District Court of the United States for the  
District of Oregon.*

FRANK L. TOBEY et al.

Complainants.

*vs.*

W. E. DE LARM, EDWARD C. KILBOURNE,  
CHARLES E. KILBOURNE et al.

Defendants.

To the Hon. Robert S. Bean, District Judge, of the  
District of Oregon:

The above named plaintiff feeling themselves aggrieved by the decree made and entered in this cause the 11th day of August, A. D. 1913, do hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit for the reasons specified in their assignment of errors, which is filed herewith, and they pray that their appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Ninth Circuit sitting at Portland, Oregon.

And your petitioner further prays that the proper

order touching the security to be required of him to perfect his appeal be made.

A. C. WOODCOCK,

JOHN M. WILLIAMS.

Solicitors for Claimants and Appellants.

Filed February 7, 1914.

A. M. CANNON, Clerk.

---

And afterwards, to wit, on the 7th day of February, 1914, there was duly filed in said Court and cause, an assignment of error, in words and figures as follows, to wit:

**[Assignment of Error]**

*In the District Court of the United States for the  
District of Oregon.*

FRANK L. TOBEY et al.

Complainants.

*vs.*

W. E. DE LARM, EDWARD C. KILBOURNE,  
CHARLES E. KILBOURNE et al.

Defendants.

And now, on this the 7th day of February, A. D. 1914, came the complainants and appellants by their solicitors Woodcock, Smith & Bryson and Williams & Bean, and says that the decree entered in the above cause on the 11th day of August, A. D. 1913, is erroneous and unjust to complainants and appellants.

I.

The court erred in entering a decree in favor of

the defendants dismissing the plaintiff's complaint.

## II.

The court erred in not finding that the defendants made the representations complained of in the complaint; that the representations were false and fraudulently, made with intent to deceive and defraud the plaintiffs out of their lands and personal property and that the plaintiffs relying upon the said false and fraudulent representations traded their lands and personal property as described in the complaint for the bonds of the Columbia River Orchard Company, as set out in the complaint; that the defendants knew the said representations were false and fraudulent and made them recklessly with intent to cheat and defraud the plaintiffs, and that the plaintiffs, E. C. and C. A. Kilbourne, had knowledge of the said fraud and knew the facts concerning same and had knowledge sufficient to put them upon inquiry concerning the same and were parties thereto.

## III.

This suit was instituted by the complainants and appellants against the defendants Charles A. and E. C. Kilbourne, and other defendants who were connected with them in the transactions charged in the bill of complaint and brought out in the evidence for the purpose of setting aside a conveyance made by the complainants and appellants herein to the defendants and respondent E. C. Kilbourne. The charge against the Kilbournes was that the complainants and appellants transferred their property

including a large farm of 4350 acres together with personal property with which said farm was equipped, the value of which was in the neighborhood of \$120,000.00. In consideration of the transfer of said lands and said personal property there was turned over to the complainants and appellants what was called Columbia River Orchard bonds, the face value of which was \$140,000.00. The bonds bore on their face representations to the effect that they were secured by good and valid security amounting to 125 cents on the dollar for each dollar's worth of the par value of said bonds. The proof in the case showed that the bonds had no security of any consequence. There were several corporations organized by the same people who were transacting business with the Kilbournes, including the Columbia River Orchards Company, Washington Irrigation and Fruit Company, Oregon-Washington Trust Company; that the various corporations, one or the other had options on some land in and about what is called the Wahluke Project in Grant County Washington, the purpose ostensibly being to put water on the land so as to irrigate the same; the project was never completed. The various corporations mentioned had no title to any of the lands, all of which was supposed to be behind and as security for the said bonds referred to, and their whole title depended upon whether they would fulfill the contracts which they had entered into to the effect that they should put water onto the lands;



all of these facts were fully established at the trial and were undisputed.

The Oregon and Washington Trust Company, were guaranters for the payment of the bonds and held some so called securities known as water mortgages, which security was of no value and depended all together on whether the companies would put water on to the land, which they failed to do and rendered the same absolutely valueless finally, but they had no value in the beginning. The companies also had some contracts of purchase which they claimed were securities for the bonds which depended for their validity on future payments and future acquisition of the lands in the Wahluke project by the companies. The testimony in this case shows and which is undisputed that the Kilbournes the only necessary defendants in the case had entered into a contract with what was called the DeLarm outfit, which included all of the corporations mentioned, and testified to in this case. The contract in a general way provided that the Kilbournes were to carry out the plan which had been formulated by the DeLarm people to put water on to the lands, the result was that the DeLarm outfit was unable to raise money and the Kilbournes ceased to do further work in developing the project, and the Kilbournes testified the reason they quit work in carrying out the contract was that they were unable to work without money.

The bonds the complainants and appellants received, was a part of a large issue and issues of bonds

which the DeLarm outfit caused to be put into circulation, and the bonds had no market value at the time that the complainants took the same for the land and property as above referred to, and the Kilbournes testified on the stand that the DeLarm outfit undertook to dispose of the bonds in the East and when they failed to do so they then wholly abandoned the continuance of their contract with the DeLarm outfit and doing the work which was to be done. This all occurred about eight month prior to the time that the trade was made with the complainants and appellants, and the Kilbournes resided in the City of Seattle, where the principal business was done with the DeLarm outfit, who were promoting the Wahluke proposition. The Kilbournes testified they knew that the DeLarm outfit had no money with which to buy land at the time the deed was made by the Tobey's to E. C. Kilbourne, and they knew that they had no resources other than these bonds with which to secure the property; they knew that the DeLarm outfit had quite a while prior to that time exchanged bonds for property in the City of Seattle and other places. The excuse made, as the evidence shows in this case for Chas. A. Kilbourne, participating in the transaction was that he had loaned his company, known as the Kilbourne & Clarke Company, a large sum of money which the company was unable to repay, and there is no evidence in the case to show why E. C. Kilbourne should have an interest in the property turned over by the

complainants or that he paid any consideration for the same at any time. The testimony in the case further shows that after the land had been conveyed to the Kilbournes by the complainants that they still continued to deal with DeLarm directly and to that end they secured a loan from Cyrus F. Clapp, and H. E. Lutz, the principal of which was \$17,500, but they paid a commission of \$5,000, for the purpose of securing a loan and that DeLarm received whatever net proceeds there was left after the commission was paid. The excuse that the Kilbournes made was, in reference to that transaction, that they allowed DeLarm to do this for the purpose of avoiding a contract which they claim they still had to perform to construct what they called an additional unit to the pumping plant.

The complainants claim that the Kilbournes were on the ground at the inception of the Wahluke Project and were the principal contractors and were necessarily both by direction and implication familiar with all the financial transactions of the DeLarm outfit; they had a large contract to complete and the evidence shows they are skillful business men and would necessarily inspect and investigate the financial condition of the DeLarm people, before they would enter into such a contract.

Based on the evidence and as a conclusion the facts are that they were all broke, both the DeLarm people and the Kilbournes, and in their desperate

effort to get money they used these bonds, and were dividing the proceeds among themselves.

This assignment of error is set out at some length for the reason of advising the court of what the complainants and appellants claim the court erred in, in arriving at its final conclusion. It is claimed that the court erred in not weighing or determining the weight of the testimony and disregarding the facts as set forth in this particular assignment of error and the numerous details of evidence connected therewith, but if the court had considered the evidence in its true light as claimed by the appellants there is only one conclusion that the court could arrive at, it would have been found that the Kilbournes were not innocent purchasers, but were parties to the fraud perpetrated by the DeLarm people and were familiar with all the transactions before they took place. The evidence further shows that no consideration whatever passed from either of the Kilbournes to the complainants and the deed was made to E. C. Kilbourne at the special instance and request of the DeLarm people.

Wherefore the complainants and appellants pray that the said decree be reversed and that the Court of Appeals render a proper decree on the records herein.

A. C. WOODCOCK,

JOHN M. WILLIAMS,

Solicitors for Complainants and Appellants.

Filed February 7, 1914.

A. M. CANNON, Clerk.

And afterwards, to wit, on Saturday, the 7th day of February, 1914, the same being the 81st Judicial day of the regular November Term of said Court; Present: The Honorable R. S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

[Order Allowing Appeal]

*In the District Court of the United States for the  
District of Oregon.*

No. 5611.

FRANK L. TOBEY et al.

Complainants.

*vs.*

W. E. DE LARM, EDWARD C. KILBOURNE,  
CHARLES E. KILBOURNE et al.

Defendants.

ORDER.

This cause came on to be heard on this 7th day of February, 1914, on the petition and application of the above named complainants, Frank L. Tobey, Retta M. Tobey, Augusta M. Tobey and William L. Tobey, through their solicitors John M. Williams and A. C. Woodcock, praying and asking that an appeal be allowed to the United States Circuit Court of Appeals for the Ninth Circuit, from a judgment and decree rendered in this cause by this Court, on the 11th day of August, 1913, said cause to be heard either at San Francisco, California, or in the City of Portland, Oregon, as may be ordered; and as-

signments of error having accompanied said petition and application of said complainants:

It is therefore, Ordered, Adjudged and Decreed that said appeal be allowed, and that the complainants furnish a good and sufficient bond, to be approved by this Court, in the sum of Five hundred dollars (\$500).

Dated this February 7th, 1914.

R. S. BEAN,  
Judge.

Filed, Feb. 7, 1914.

A. M. CANNON,  
Clerk U. S. District Court.

---

And afterwards, to wit, on the 9th day of February, 1914, there was duly filed in said Court and cause a Bond on Appeal, in words and figures as follows, to wit:

**[Bond on Appeal]**

*In the District Court of the United States for the  
District of Oregon.*

FRANK L. TOBEY et al.

Complainants.

*vs.*

W. E. DE LARM, EDWARD C. KILBOURNE,  
CHARLES E. KILBOURNE et al.

Defendants.

**BOND.**

*Know All Men by These Presents, That we, Frank L. Tobey, Retta M. Tobey, his wife, Augusta M. To-*



bey and William L. Tobey, as principals, and E. O. Tobey, as surety, are held and firmly bound unto Edward C. Kilbourne and Charles A. Kilbourne in the full and just sum of five hundred dollars (\$500), to be paid to said Edward C. Kilbourne and Charles A. Kilbourne, their attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 7th day of February, in the year of our Lord one thousand nine hundred and fourteen.

Whereas, lately, at a session of the District Court of the United States for the District of Oregon, in a suit pending in said Court between the said Frank L. Tobey, Retta M. Tobey, Augusta M. Tobey and William L. Tobey, complainants and appellants, and Edward C. Kilbourne and Charles A. Kilbourne, et al, respondents, a decree was rendered against the said complainants Frank L. Tobey, Retta M. Tobey, Augusta M. Tobey and William L. Tobey, and the said complainants having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals to reverse the decree of the aforesaid suit, and a citation directed to the said Edward C. Kilbourne, Charles A. Kilbourne, et al, is about to be issued, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at Port-

land, Oregon, or at San Francisco, California.

Now, the condition of the above obligation is such that if the said complainants shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them if they fail to make their appeal good, then the above obligation is to be void; otherwise to remain in full force and virtue.

(Seal)

AUGUSTA M. TOBEY.

By John M. Williams, her Atty.

(Seal)

RETTA M. TOBEY.

By John M. Williams, her Atty.

(Seal)

FRANK L. TOBEY.

(Seal)

WILLIAM L. TOBEY.

Principals.

(Seal)

EDGAR O. TOBEY.

Surety.

Sufficiency of surety on the foregoing bond approved, this 9 day of February, 1914.

R. S. BEAN,

Judge.

Filed Feb. 9, 1914.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit on the 7th day of March, 1914, there was duly filed in said Court and cause, a citation on appeal, in words and figures as follows, towit:

**[Notice of Appeal with Acknowledgment  
of Service]**

**CITATION ON APPEAL.**

United States of America,  
District of Oregon—ss:

To Edward C. Kilbourne, Charles A. Kilbourne, W. E. DeLarm, Columbia River Orchards Company, a Corporation, Oregon & Washington Trust Company, Trustee, of Portland, Oregon, and the Washington Orchard Irrigation & Fruit Company, a Corporation, Greeting:

Whereas, Frank L. Tobey and Retta M. Tobey, his wife, Augusta M. Tobey and William L. Tobey have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law;

You are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, Oregon, in said District, this 9th day of February, in the year of our Lord, one thousand nine hundred and fourteen.

R. S. BEAN,  
Judge.

United States of America,  
District of Oregon.

Due and legal service of the within citation is hereby acknowledged in Multnomah County, Oregon, this 9th day of February, 1914, on behalf of the appellees Edward C. Kilbourne and Charles A. Kilbourne by receiving a copy thereof.

WOOD, MONTAGUE & HUNT,  
Attorneys for Defendants and Appellees Edward C. Kilbourne and Charles A. Kilbourne.

Filed March 7, 1914.

A. M. CANNON, Clerk.

And afterwards, to wit, on the 2nd day of October, 1914, there was duly filed with the Clerk of said Court, a transcript of testimony on appeal and on the 4th day of November, 1914, the same was filed in said Court and cause, approved, in words and figures as follows, to-wit:

**[Abstract of Evidence]**

*In the District Court of the United States for the  
District of Oregon.*

5611.

FRANK L. TOBEY and RETTA M. TOBEY his  
wife, AUGUSTA M. TOBEY, and WILLIAM  
L. TOBEY,

Complainants,

*vs.*

W. E. DE LARM, EDWARD C. KILBOURNE,  
CHARLES A. KILBOURNE, J. ALEXANDER  
WAKEFIELD, CYRUS F. CLAPP, H. E.  
LUTZ, W. J. BURNS, THE EDINBURG AND  
PACIFIC COAST MORTGAGE AGENCY LIM-  
ITED, COLUMBIA RIVER ORCHARDS COM-  
PANY, a corporation, OREGON-WASHING-  
TON TRUST COMPANY, of Portland, Oregon.  
Trustee, a corporation, and THE WASHING-  
TON ORCHARD IRRIGATION AND FRUIT  
COMPANY, a corporation,

Defendants.

TRANSCRIPT OF TESTIMONY ON APPEAL.

---

Lodged with me October 2, 1914.

G. H. MARSH, Clerk.

Filed November 4, 1914.

G. H. MARSH, Clerk.

---

W. L. TOBEY, a witness called on behalf of plaintiffs, and being first duly sworn, testified in substance as follows:

That I am one of the plaintiffs; am 52 years old; a merchant; and reside at Merlin, Oregon. That I am one of the persons who were joint owners of the lands described in the complaint. That I formerly resided in Gilliam County and went there in the spring of 1898.

That I am a brother of defendant Frank L. Tobey; that *Rita* M. Tobey is Frank's wife and that defendant Augusta M. Tobey is my mother.

That the amount of land involved in this case is a fraction of an acre less than 4350 acres. That the land was listed for sale with the Northwest Exchange, a real estate firm, at \$25 per acre. This was in January or February, 1911. There were three members of the real estate firm, Mr. Sherlock and two others.

That Mr. Sherlock called me up after the lands were listed and told me that he had a bond proposition to submit. That he called Mr. Humphrey to his office. That I had never met Mr. Humphrey



(Testimony of W. L. Tobey)

and found later that Humphrey occupied an office with Mr. Hodges.

Mr. Humphrey gave me a general outline of the proposition up there at Wahluke and what securities were behind them. Humphrey said that the bonds were issued by the Columbia River Orchard Company and guaranteed by the Washington Orchard Irrigation and Fruit Company. Humphrey didn't tell us much about the project at that time. Afterward, in a general way, Humphrey told me that they had quite a large holding of land there that they had titles to and that they were selling these lands.

Humphrey said that the securities behind the bonds were 125 per cent of the bonds in real estate mortgages and as additional securities 125 per cent of sales contracts on these lands; and that the Washington-Oregon Trust Company held these securities.

I went from Mr. Sherlock's office with Humphrey over to Hodges' office and met Hodges.

Mr. Humphrey represented that their ditches they had been working on would give them something like 7000 or 8000 acres. He said they had options on something like 10,000 acres, had it under their control. Humphrey said they were selling the land at \$350.00 an acre on contract with a payment down. Mr. Humphrey gave a general outline of the pumping plant, what they were doing, the work being done on that, their ditches, how they were getting the water on the lands, etc., and that they were to put water on

(Testimony of W. L. Tobey)

the land at \$350 per acre. That the 10,000 acres they had options on was Northern Pacific Railroad land.

Mr. Humphrey and Frank Tobey went to Mr. Hodges' office with me and Mr. Hodges went over the proposition with me much more than Mr. Humphrey did.

Mr. Hodges said they had real estate mortgages to the amount of 125 per cent; also sales contracts to the amount of 125 per cent of the bonds issued. That the contracts were on lands that they had sold in this project at \$350 per acre with a contract to put water on the lands. Mr. Hodges said they owned about 4000 acres in the project, and that they had options on about 10,000 acres of Northern Pacific Railroad land in addition to the 4,000 acres that they owned and had title to. Hodges didn't say which company owned the title to the Wahluke plant.

Hodges said the bonds were issued by the Columbia River Orchard Company and were guaranteed by the Washington-Orchard Irrigation & Fruit Company, and I was of the impression that Hodges said the Washington Oregon Irrigation & Fruit Company owned the title to the land within the project.

I was not shown any of the securities claimed to be behind the bonds but Hodges said he, Hodges, held them as trust officer, and afterwards told me that they were in a deposit box at the hotel where he was rooming. Hodges never offered to show the securities to me.

(Testimony of W. L. Tobey)

Hodges used every effort in trying to make the proposition, bonds and securities look good. He had maps of the project and photographs of the ditch and pumping plant and of the work that they were doing. Hodges said DeLarm and Biehl were back of the project and that he would get Mr. DeLarm down from Seattle to explain it further.

Two or three days afterwards Mr. DeLarm came down and we met him at Mr. Hodges' office. Mr. DeLarm told us about the securities just the same as the other two had; that they had 125 per cent of real estate mortgages as security for the bonds and a guaranty by the Fruit Company. In a general way he said that some of the mortgages were on those lands at Wahluke, and some were not; that they had mortgages on other lands beside what was in that project. He didn't explain their character more than that they were first mortgages on real estate. I asked him about that. I did not ask to see the securities at that particular time. Mr. DeLarm said about the same as the others, that they had about 4000 acres and options on about 10,000 acres of railroad land. DeLarm said that the sales contracts were for lands sold at \$350 per acre. Myself and my brother Frank were present and Hodges was in and out of the office during this conversation. Mr. DeLarm explained the general nature of the project and the irrigation system. He had maps, photographs and a general outline of their work, what they were do-

(Testimony of W. L. Tobey)

ing, how they were building their ditches, where their pumping plant was located, and a general idea of how it was conducted, how it was being built. This conversation lasted for several hours. He said that the ditch they were then digging would put water on seven or eight thousand acres. DeLarm said that the bonds were 20 year bonds. That their plans then were that they would create a sinking fund from a certain per cent of moneys received from the sales of land, and that they estimated that in about seven years, they would be able to retire the bonds to pay the bonds off. He stated that he had 125 per cent mortgages and 125 per cent sales contracts behind the bonds, making a total of 250 per cent, and that the Washington Oregon Irrigation & Fruit Company guaranteed the payment of the bonds I think he said and that this company was the owner of the land.

The next arrangement was for them to go up and see the ranch in Gilliam County. DeLarm said, of course, that he would want to see the land; that he didn't pretend to be a judge of farm land values, etc., and that he had an acquaintance there in Seattle that he wanted to go with him to use his judgment on the land. Within one or two days after that, we went to the ranch. Mr. DeLarm and Mr. E. C. Kilbourne and I went up. Frank was at the ranch at that time. He had gone on ahead. Mr. DeLarm said he wanted Mr. Kilbourne along to use his judgment. He would

(Testimony of W. L. Tobey)

rather trust to his judgment on the character of the soil, and the values, etc., than to use his own. That he didn't know much about farm values and property. We left Portland about 10 o'clock in the evening and traveled at night. We got to Arlington about one or two o'clock in the morning and started to the ranch between six and seven o'clock and got out there about ten o'clock, and *staid* there until perhaps the middle of the afternoon.

Mr. Kilbourne, Mr. DeLarm and I rode over the ranch; that is, over part of it, before noon; over the east portion of the ranch, inspected it, and got to the buildings in time for dinner. Mr. Kilbourne got out and looked at the soil; looked at the grain on the ground, etc. As we were driving through the field occasionally we would stop and look and examine. We got back to the house just about dinner time; had dinner there. After dinner we went out and went around the buildings, looked at the stock; there was some stock being worked. We all looked at the stock, Mr. Kilbourne, Mr. Hodges, Mr. DeLarm, my brother and myself and our foreman, Jones. I presume to say that we were around the buildings there looking over the stock and machinery and different things perhaps, I should think possibly an hour. All of the personal property mentioned in the schedule attached to the bill of complaint was there, unless it might be possible there might be a team that was out on the work somewhere, something like that, but I



(Testimony of W. L. Tobey)

think everything was right there. The combined harvester was in a building separate by itself, about a quarter of a mile from the other buildings. We went up there and looked at that. The stables are about three or four hundred feet from the house. Do not know whether the caterpillar engine was at the building or out in the field at that time. He looked over the horses and mules. The horses and mules that were at work were in the stable, of course, being fed at noon. The balance of them, most of them, at least, were in the yards at the buildings.

We had not entered into a contract at that time, but we had talked that we would keep part of the stock. Nothing was said at that time about what the stock was worth. No particular item of it was discussed more than to say, he thought we had a fine bunch of animals there, mules.

Mr. DeLarm took very little interest apparently and did very little talking. What little talking was done was done mostly by Mr. Kilbourne. We went back to town that evening. We left Arlington early in the evening. Nothing was said particularly on this trip what we were to get for the place.

On the trip back home, of course, we wanted to know something about what their decision had been and I asked the question if they had found the place about as I represented, and they said yes, that the place was as good or better perhaps than they expected to find, about as represented. They both said that.



(Testimony of W. L. Tobey)

We entered into a contract with DeLarm on the 25th day of February, 1911. I have a copy of the contract. After that I arranged to go to Seattle to investigate their proposition. I went to Seattle to see Mr. DeLarm and to investigate the proposition, bonds, etc. I saw Mr. Biehl; was in the office. They went over the entire project again; showed me maps of it, photographs, and there they showed me some sales contracts, and notes for sales they had made at Wahluke.

They referred me to several different ones; amongst them were A. C. Gunn and a man by the name of Morrison. I went into Mr. Morrison's office; talked with him. I asked him what he knew about their proposition, the bonds, securities, etc., and he pointed to a safe in the corner of the room and he said, "I have several thousand of their bonds in that safe." He said, "I am holding them as an investment and I consider them perfectly good. He spoke of their project at Wahluke as being good; spoke very favorably of it every way. He said that he considered DeLarm and Biehl good men, that were reliable, and that were capable of handling it and putting through this proposition.

I spent quite a little while in Mr. Gunn's office, probably an hour or more. He went over the entire proposition, said that he had investigated it probably more thoroughly than any one else had on the outside, and he made the same remark about having

(Testimony of W. L. Tobey)

some bonds that Mr. Morrison had made. He didn't state how many he had, but he had quite an amount of the bonds that he owned, and was holding them as an investment, and he spoke of their securities, their mortgages and sales contracts; that he had investigated them, and he made the remark that he would consider, even if the company went into the hands of a receiver, that their securities back of the bonds would be sufficient to pay out 80 or 85 cents on the dollar of the issue at that time. He said the securities were real estate mortgages and sales contracts, 125 per cent of each. That is the only two individuals I saw. I went to see one attorney, I couldn't tell his name, wouldn't know it if I was to hear it now, to get the information, but I could get none from him at all. You might say he practically said that it took money to get information from him; that he had nothing to give away.

I went to two banks there. I went to the Dexter Horton; I think that is the name of the bank—National Bank, and they said that their banking rules were such that they could give no advice or information regarding investments. Couldn't get any information from them. The Mercantile Bank told me practically the same thing that the other bank had told me; could get no information from them. They are the only ones I saw there, was there one day.

Of the time I was there investigating it, I prob-

(Testimony of W. L. Tobey)

ably spent half of the time in DeLarm & Biehl's office, several hours. Mr. DeLarm impressed me quite favorably, being a bright young man, a man that inspired confidence. I had a great deal of faith in him from talking with him.

After coming back from Seattle, from what information I could gather, I decided that the bonds weren't worth par, and we decided to turn down the contract that we had entered into, for the reason that I didn't think we were getting value received for our ranch. I was influenced to that from the statement Mr. Gunn had made that the securities back of the bonds would probably pay out 80 or 85 cents. We were getting 120,000 in bonds on the first contract.

We entered into negotiations for a further contract. A few days after my return from Seattle. Mr. DeLarm came down, and then we made another contract. Contract identified and admitted in evidence marked Plaintiff's exhibit 1.

The contract calls for \$141,000.00 140,000 in bonds and \$1000 in cash and witness was asked to explain the \$1000.00.

We had some supplies, such as groceries, in the house, and wood. We had just shipped a car of wood and quite a lot of that was on the ground, and some engine oil, distillate, etc., and grain; supplies of that kind that we had, that we asked for this \$1000.00 as partial payment for that stuff. All of that stuff represented cash.

(Testimony of W. L. Tobey)

Mr. DeLarm was in Portland in Mr. Hodges office at the time we were negotiating for the contract and I couldn't say for sure whether it was completed on the 4th of March, all in one day, or whether we talked it over for a part of one day and completed it the next.

We were induced to take these bonds from the representations made to us by DeLarm and Biehl and Hodges and Gunn and Morrison and the different ones that we had talked to. These were the only ones we obtained information from, and I believed those representations, and being asked whether or not he relied upon these representations in making the contract, witness said, "I certainly did, yes. That is the only thing I had to rely upon—was their statements."

I never was at Wahluke and had never been on the project.

The deeds were made on the 15th of March, the day they bear date, and were made out in Mr. Hodges' office. I think Mr. Brazell made them out. Mr. Brazell, I think, was a stockholder in the company. Mr. DeLarm, Mr. Hodges, Mr. Brazell, Mr. E. C. Kilbourne, my brother and myself were present at that time, and Frank's wife was there to sign them. She came down there. The bonds were present in the office when the deeds were signed and we counted them over to know that they were all there. At the time of signing the first contract, the contract for the \$120,000.00 sale, they gave us \$3000.00 of bonds and

(Testimony of W. L. Tobey.)

we had them at that time and counted them up to see if all were there. Mr. E. C. Kilbourne was present when we were counting the bonds. The deeds and bonds were done up in a package and placed in escrow in Hartman Thompson's bank. Mr. Hodges and I went there with them. They were put in escrow, because there were some defects or something about the title that Mr. Kilbourne objected to. The deed was made to E. C. Kilbourne at Mr. DeLarm's request, at the time we started to have the deeds drawn up. When we got that far with the proposition, he said that he was having the lands deed to Mr. Kilbourne. Mr. DeLarm said, in the course of our conversation, regarding his proposition, that he was aiming to raise money to promote his scheme up there, and when he wanted to trade for our ranch up there, I asked him how he could use that land to pay the debts and he said, "I have got a place for this property before I buy it. If I didn't have I wouldn't want it, but I know right where it is going." Mr. Kilbourne's name was not used before the 15th of March with reference to the deeds, not until the time of making out the deeds. The deeds and bonds remained in escrow about eight or nine days, something like that. In the meantime, to meet the objections of Mr. Kilbourne, to the title we went to Mr. Chamberlain's office, an attorney here in Portland who was examining the titles, to see what his objections were and to make arrangements to correct whatever defects



(Testimony of W. L. Tobey.)

we found in the titles. He was acting for Balfour-Guthrie Company, or the parties who were making this \$20,000 loan, whoever it was. He made the objection to Mr. Kilbourne after the deeds were put in escrow, because at that time they had wanted to know that there were no faults with the titles to the land. There was an agreement drawn up at that time, on the 15th of March, in regard to the escrow. It was drawn by Mr. DeLarm or by his instructions.

The agreement identified and introduced in evidence as Exhibit No. 2.

When Mr. Chamberlain was satisfied in regard to the title, the deeds were delivered and we took the bonds. As near as I can tell, the deeds were delivered about the 24th of March. I am not sure that I could tell just whose hands the deeds were delivered into. I was present when the deeds were taken from the bank and Mr. Hodges was with me. We went to Mr. Hodges' office and I could not say whether there was anyone else or not, more than the stenographer, at that particular meeting. I couldn't say for sure whether Charles A. Kilbourne was in town or not on the day the deeds were delivered. He was there when they were made out. I couldn't say for sure into whose hands the deeds were delivered, whether Mr. Hodges took possession of those deeds at that time or not. I don't recollect about that.

The deeds and bonds were exchanged at the same time when they were taken out of the bank, out of



(Testimony of W. L. Tobey.)

escrow. I took the bonds and they took the deeds, whoever it was. I know Mr. Hodges was there but whether anyone else was there or not, that is the part I don't recollect.

In the contract of March 4th mention is made about a loan that we were to have a loan of \$6000.00. Eventually that was carried out. Not at that particular time but afterwards we made the loan.

Exhibit 3 identified as contract having been made between the parties on the 15th day of March, and introduced in evidence.

In regard to the second payment of \$3000.00, the second \$3000 was paid by Mr. Hodges. It was not all paid at one time. At first a \$500 check was sent by DeLarm. We put that in the bank, Ladd & Tilton's bank, and it was returned "No funds" for payment before it went to protest. We got the \$500 after two or three weeks back and forth, working over it. At last we got him to come through and pay it and later Hodges paid us the balance of \$2500. The first \$300.00 was paid on the 15th of March. I think that was the date of it. We made notes for that. They were made payable to the Oregon & Washington Trust Company.

When we were discussing the question of the Wahluke project with Mr. DeLarm, he made representations to us about the quantity of bonds outstanding at that time. Before we received the bonds he said there were about 300 or 325 thousand out at that

(Testimony of W. L. Tobey.)

time, face value. In the course of the conversation that would come up, he made the remark that they had about \$300,000.00 of bonds then issued. That statement was made in his office in Seattle the day that I was in his office. I couldn't give the exact date. It was only a very short time, not more than a day or two, two or three days, before the date of the contract, early in March. It was sometime between the 24th of February and the 4th of March.

I first came to Gilliam County in 1898. I came first and went into the mercantile business, a store. We acquired the first land there, I would say, possibly some three years after my first coming to Oregon. That is the first land we bought in the county. We bought the last land, I think, in the year 1910, 160 acres. At different times we have bought different amounts. We had bought at another time 160 acres, at another time 2400 acres, about three years after my first coming to Oregon, as near as I can remember. Frank was with me at that time and we bought it together. We farmed the land, I should say about eight years, but I am not sure as to that. The place was rented in 1909 and 1910 to John Chandler. He carried on the place for one year and transferred the lease to a man by the name of Wade. Mr. Wade farmed it two years. We rented it for grain rent, a portion of the crop. We got possession of the place from Mr. Wade the first of November, 1910.

Mr. Wade had about 1500 acres of land plowed on

(Testimony of W. L. Tobey.)

the place. We were living in Portland while Mr. Wade had the land. We were not up there very often during the time it was rented.

I was familiar with land values in that neighborhood during February and March, 1911, pretty well. The reasonable value of the land and farm equipment at that time would be \$120,000.00. The equipment would reasonable be worth \$17,500 or \$18,000. Being asked to state why he put it as low as Fourteen to fifteen thousand dollars in the complaint, he said "Simply because I did not take the necessary time to go over each item on the place and make an accurate estimate of its value."

I was living in Southern Oregon, Merlin, at the time the bill of complaint was drawn and gave the necessary information to Mr. Woodcock. I received a letter from him asking for the reasonable value of the farm implements, stock, etc., on the place. I didn't spend but a very short time in figuring on it, was busy in the store and didn't go over it as thoroughly as I should have done. I have figured more accurately since that time. To replace everything new there, it would cost over \$25,000.00. In making the estimate of seventeen to eighteen thousand dollars I took into consideration the wear of what was on the place at that time.

I couldn't state exactly how much land was under cultivation because it never was surveyed, but as near as we could tell, about four thousand acres.

(Testimony of W. L. Tobey.)

That would leave about 350 acres waste land, that is, land that can't be cultivated, wouldn't be suitable for plowing. It is valuable for pasture for *that* stock we have got to have. We have got to have pasture for them when not working.

We had the caterpillar engine mentioned in this list of personal property just a short time. We bought it in the fall before selling the place. We paid \$4000 in Stockton, California, for it. I think the freight was \$120.00. We had just bought the engine gang plow at about the same time as buying the engine, during that winter. We had the Holt harvester five or six years. Three of the disks we bought during that winter; never had been used. One of them was bought a short time before that, I can't tell just how long but not long before.

I don't think that I could tell just the number of feet they cut but I think about ten feet. I wouldn't be sure of that. They cost us either \$105 or \$110 each. Some of the harness was in good condition. There was some new harness, that is practically new, not right new, but that was in good condition, and there was from that down to, you might say, poor. We were buying more or less nearly every year.

The horses and mules together would be worth \$135 or \$140 per head. I did not include the bunk house in my estimate of seventeen or eighteen thousand dollars. I did not include the pump house but the pump I did include, because that was new.

(Testimony of W. L. Tobey.)

We had bought that just a very short time before. The pump and pump jack, as I remember, were about \$2000.00. The well was 192 feet deep. I included the tools in the blacksmith shop in the estimate but not the building. Did not include the reservoirs nor the barns nor the windmill nor the headquarters house nor the stock and stock barns. I did not take into consideration any buildings that were on the place in making that estimate.

The fencing on the land was mostly three wire fence with cedar poles, a little two wire fence and a number of rails. It would be very hard for me to state but I would make an estimate of 15 miles of fencing on the place, but that is something I couldn't because I never thought of it in that light. The state of the ground that Mr. Wade plowed in the fall of 1910, was in very good condition, fairly well cultivated. There was grain sowed on the place when it was turned over to Mr. Kilbourne. Of course, in giving this answer it will have to be an estimate, because we do not know exactly the number of acres in any piece, but as near as I could tell, about 1,300 acres. That was fall seeding and we were getting ready to do some spring seeding. I am not sure at that time whether the seeders were being run or not, but I think they were. I think at that time they were seeding but I wouldn't be positive of that, whether they were seeding or finishing plowing. There was about 1,900 to 2,000 acres plowed on the place all to-



(Testimony of W. L. Tobey.)

gether when it was turned over to Mr. Kilbourne.

The value of the plowing, including the seed that was put on to the ground, I would say from \$2.50 to \$3.00 per acre. There was about 1,300 acres seeded and about 1,900 acres plowed and not seeded. I do not know that I could state just what they were receiving or charging for plowing at that time, although I will say to that, Mr. Wade the year before plowed a piece of land on the adjacent ranch and we got a part of the pay for it for having loaned him the stock and he got \$2.00 per acre for plowing. It would be well worth \$1.50 per acre anyway to plow. I can't state whether the equipment turned over to Mr. Kilbourne was sufficient to carry on the farming as a wheat ranch for this reason; we had just bought this caterpillar engine to take the place of a lot of the stock and you might say that was an unknown quantity. That is to say, we didn't know just how much of the work was going to be done with that and what was to be done with stock, but we aimed to hold stock enough on the place to work the place including the engine. We thought it would be sufficient to run the place.

We had no other property than what we had up there on the place. In answer to the question, "You may state whether or not at any time you asked either Mr. Hodges or DeLarm about what the securities were they claimed were behind the Columbia River Orchard Bonds?" witness answered, "Yes,



(Testimony of W. L. Tobey.)

I did, I asked them to see them.” “I asked Mr. Hodges once here in the office, I couldn’t say just when it was, but some time during the session, to see his security, but he always made the excuse that the securities were in a deposit box at the hotel, I think it was, where he was staying. He didn’t have them in the office because he had no vault or safe there. I asked him at different times before the deeds were made out to see the securities and he made the reply that the securities were not there in his office and that he had no safe there.”

The Court adjourned until tomorrow morning at ten o’clock.

Mr. W. L. Tobey recalled, continued his testimony.

Witness was asked this question: “You testified yesterday that you had listed your land with the Northwest Exchange at \$25.00 an acre. Did that include the equipment?” Answer: “No, sir; that was for the land only.”

Cross Examination.

(By Mr. C. E. S. WOOD.)

We did not learn that we had been defrauded in these bonds until the final climax came, about the first of February, not until they went into the hands of a receiver. That was about the first of February, 1912. The first we knew of it, we saw it in the paper. The interest on the bonds had not been paid. The interest was not due until the first of February

(Testimony of W. L. Tobey.)

and I think they went into the hands of a receiver before the first of February the interest coupons were due on the first of February and it seems to me that we saw in the papers of their failure before that date. Yes, I am sure that it was a little before the first day of February.

I never knew Mr. Sherlock, only after I met him in the office. I lived here in Portland at that time. I live now in Josephine County and my brother, Frank, lives in Josephine County now.

The Tobey ranch is near the town of Olex in Gilliam County. I went to Olex as a merchant, opened a business there. I first went to Arlington in the same county. My brother joined me, I think it was September following my going there. We were partners as merchants. Then we went from Arlington to Olex. That was in the year 1898. We continued the merchandise business in Olex for several years. My brother and I farmed this land personally. We only lived there, I think it was one year. I think perhaps it was part of two years but it would be one year's time as I remember it now. We farmed all of it. We called it about 4,000 acres of tillable land.

When we bought the land there were different prices. It wasn't all the same price; bought at different times. The land cost us anywhere from the neighborhood of \$11 to \$12 an acre. We accumulated this 4,000 acres in parcels. We bought it at

(Testimony of W. L. Tobey.)

different times and in different ways, different people. I think there were six different purchases. The smallest tract was about a 40 acre tract. There were more than six purchases. There were seven or eight or nine purchases, I think, varying from a 40 acre tract up to 2,400 acres. The lowest price we paid for any particular tract, as I remember it, was perhaps \$10. We purchased one piece of 160 acres from a man by the name of Ward. I think the price was about \$10.00. I couldn't state exactly. I couldn't give the year. We had had this quarter section of land possibly five or six years before we sold to DeLarm.

The highest price we paid for any one parcel, I would say about \$12. I think we bought a piece from a man by the name of Ramsey that would figure up \$12 as I remember it. I can't tell the exact date we bought that. Might have been perhaps the year 1903 or 1904. Something over 900 acres. This man Ramsey owed us in the store a small account that was applied as a part of the purchase price. The balance of it was cash, (*cash*) that is, cash payments. There was one 160 acre tract that was in the same condition, I think. I do not think we foreclosed any mortgage on any piece. That isn't my memory that we did.

The year Mr. Wade farmed it was 1909 or 1910, I think. It was on a crop rental basis. We got one-half of the crop rent. I couldn't give the figures as

(Testimony of W. L. Tobey.)

to how much we got. It would be impossible for me to answer that question. It was wheat, I think; he had both wheat and barley. I couldn't say how many bushels of wheat we got. It would be impossible for me to answer that question. I have no record of it.

A man by the name of Chandler had it rented another year on a crop rental, one half. I do not remember what we got out of that. I have no means of knowing whether Wade or Chandler made any money off of it or not, because I don't know what it might have cost them to operate it. Mr. Chandler transferred the lease to Mr. Wade and Wade threw up the lease. We never kept any record so as to know exactly to the dollar what we made. We didn't go behind on it, I can state that.

Witness was asked this question: "Why did you put it on the market to sell?" Answer: "Because we did not care to live in that country longer and we preferred to have our property where we were living. We had seen the advertisement of the Northwest Exchange in the paper and we were willing to give him a chance to sell it. Had no personal acquaintance there at all at that time and afterwards only as I would meet him in his office, is all I know about him. Sherlock was not part of the DeLarm crowd, as far as I know. His first report was in regard to these Columbia Orchard Bonds. He didn't tell me much of anything about them, because he said

(Testimony of W. L. Tobey.)

he didn't know much. He just stated it was some bonds and that he would have to call one of the men from the office to give us an outline of the proposition. He called Mr. Humphrey. I didn't know at the time where he was getting them; he said he would call in a man, and Humphrey put me in connection with Mr. Hodges.

Witness was asked this question: "And Humphrey and Hodges, as I understood you on direct, both told you about the same thing, that it was this irrigation scheme, and that they had security enough under it, so that if the scheme never went through, the bonds would be worth eighty cents—is that right?" Answer: "No, they didn't tell me that. I learned that while in Seattle. I was told that in Seattle. That 80 or 85 cents valuation I learned from Gunn over in Seattle."

The witness was asked: "What did Humphrey say to you about securities and values?" Answer: "Why, he represented that the bonds were secured by mortgages to the amount of 125 per cent; in addition to that sales contracts to the value of 125 per cent. I couldn't say that Hodges told me at that particular time who was trustee for the bonds. Mr. Hodges said that he was the trust officer. That is, I learned at Mr. Hodge's office that he was the trust officer. I couldn't give the exact date of that. That must have been in February of 1911.

I didn't hear any mention of the Washington Sav-



(Testimony of W. L. Tobey)

ings & Trust Company. In fact, I don't know that at that particular time, at our first meeting, I could say for sure whether there was any trust company mentioned or not. I don't know that we had got that far with the transaction as to inquire who the trust officers were at that particular time at that first meeting.

Witness was asked this question: "Wouldn't it be natural in dealing with bonds instead of money, that one of the first things you would say, is, who is the trustee holding and issuing these bonds? Don't you think that is natural?" Answer: "Well, that would come in the examination of the securities, but whether it did at that first meeting with Mr. Hodges, or not, I couldn't tell for certain. I can fix the time only in a general way. It would be my impression during the month of February. I should say at least a month, possibly a little longer than that, before we gave the deeds. After I met Humphrey, I met Hodges the same day and I am not sure whether the question came up on that day at all with either Humphrey or Hodges, about who was the trustee. I couldn't state positively whether that did come up at that time or not. They told us that the bonds were secured by 125 per cent securities. After talking with Mr. Humphrey and then Mr. Hodges, we arranged for a meeting with Mr. DeLarm. That took place within a few days. When we talked with DeLarm, Mr. Hodges and my brother were present



(Testimony of W. L. Tobey)

and I think that Mr. Humphrey was in and out of the office during the time.

Mr. DeLarm, in the conversation with him, made a report of what their securities were, of the mortgages and sales contracts the same as Mr. Humphrey and Mr. Hodges had done. He said that they were first mortgages on real estate and sales contracts for lands in this project. He indicated that the real estate, part of it was there upon the project and a part in other places; not necessarily all of it on the project. He didn't indicate where the outside property was. He said some of this mortgaged land was under the project. I do not know that we inquired just the location where the rest of it lay.

Question: Weren't you curious about the value of these securities?

Answer: Did I inquire about it?

Question: Did you inquire? If he told you that he had certain lands as security for the bonds, didn't you want to know all about it?

Answer: Why, of course, we would want to know about it.

Question: But you didn't ask at that time?

Answer: Why, he said that they were worth, the land in the project that he was backing the security on, he was selling the same class of lands for \$350 an acre.

Question: Yes, but the point I am getting at, did you ask him where is the land situated that you hold

(Testimony of W. L. Tobey)

mortgages on for security?

Answer: Why, yes. I answered that a part of it was on this project, and a part of it was the land in other places.

Question: Did you ask in what other places?

Answer: I didn't ask him to give me the exact legal descriptions of the property, no.

Question: Neither did you ask him to give the general locality?

Answer: No, I didn't at that time, no.

Question: Now, did you ask at this time who the trust company was that was acting, who pretended to issue these bonds as trustee?

Answer: No, I don't think that that came up at that meeting. I first learned who the trustee holding the bond issue was on my trip to Seattle. As I understood it, the Dexter Horton Bank, that it had been, but that it was being transferred at that time to the Oregon & Washington Trust Company of Portland. I couldn't give the exact date I was in Seattle. It was some time during the month of February, 1911.

Mr. DeLarm told me that they were establishing a trust, or transferring their trust to Portland. He said that the Dexter Horton Bank, or connected with the Dexter Horton Bank, had been acting as trustee at that time.

Q. Did you go there and inquire about that trust?

A. I went there to inquire about the proposition, yes, sir.

(Testimony of W. L. Tobey)

Q. Who did you see there?

A. I couldn't tell. I don't know the man's name that I saw now.

Q. Did you ask to see the trust officer?

A. I don't know whether I did or not.

Q. Did you go to the Dexter Horton National Bank, or to Dexter Horton Trust & Savings Bank?

A. I suppose it was the Dexter Horton National Bank.

Q. Did you tell them what your business was?

A. I told them that I wanted to get what information I could regarding the Columbia River Orchard Company bonds.

Q. And they didn't refer you over to their other bank that held the trust?

A. No, they did not.

Q. Did you tell them that you were thinking of buying some bonds?

A. I can't say whether I told them or not.

Q. Now, you said on your direct, that they said they weren't allowed, under their rules, to give advice or information on bond investments, didn't you?

A. I said that they gave me to understand that they had no information to give on investments and propositions of that kind; that they weren't in business to give any information.

Q. Now, that answer of theirs would seem to indicate that what you asked them was what the value of these bonds was. If you had asked them who

(Testimony of W. L. Tobey.)

was the trust officer for the Orchards Company, they would have had to tell you, and they would have had to refer you over, wouldn't they?

A. Well, I don't know. I didn't ask it in that way, I suppose.

Q. I am not trying to testify for you. I am trying to refresh your recollection. It looks from the answer that you say they gave, that they weren't allowed to make recommendations or give advice, as if you were asking about the value of the bonds. Wasn't that, now, what you asked them?

A. I was asking—I asked them in regard to the companies, to know something about their standing, etc.

Q. Well, about their standing; but you didn't ask to see the trust officer, or who held the trusteeship, where you could go to get the information on that head?

A. Possibly I didn't.

Q. Then what other bank did you go to?

A. I went to the Mercantile Bank, I believe is the name of it. I wouldn't be sure as to the name of it.

Q. They gave you about the same information?

A. About the same answer, yes, sir.

Q. So that would indicate that you were asking about bond values. You had no idea that Mercantile Bank was the trust company, did you?

A. Oh, no, no.

(Testimony of W. L. Tobey.)

Q. Well, you found from your inquiries over there that this bond issue had a pretty good reputation, didn't you?

A. I did.

Q. Mr. Gunn said he had some in his safe?

A. Yes.

Q. Who is Gunn?

A. Why, he is sort of a real estate man or broker, something of the kind, I think.

Q. And he is a broker, or real estate man, you say?

A. That is my impression that was his business.

Q. Who referred you to him—DeLarm?

A. DeLarm, yes, sir.

Q. Did you ask anyone else what kind of a man Gunn was?

A. Ask about Gunn?

Q. Yes.

A. I did not.

Q. Do you know now whether Gunn is a disreputable man, or not?

A. No, I do not.

Q. Who was the other man that you asked?

A. I inquired from a man by the name of Morrison.

Q. What is his business?

A. Well, I don't know, but I suppose he is a real estate man. But yet I don't know what his business is.

(Testimony of W. L. Tobey.)

Q. Well, was he in any way associated with DeLarm in business?

A. Not that I know of.

Q. I am not sure that I have my memorandum right on this, but did he also say he had some of the bonds?

A. Yes, sir.

Q. So they each said that they had some, and considered them a good investment?

A. Yes, sir.

Q. What did you learn were the actual—I don't mean the percentages, but what cash securities back of these bonds? You said something about their being mortgages, and you also, if I remember rightly, said something about there being water mortgages and contract sales. When did you first learn that these securities were supposed to be back of the bonds?

A. Why, at my first meeting here in Portland, with Hodges and Humphrey.

Q. Well, did you make inquiry over at Seattle concerning these securities?

A. No more than what I made in DeLarm's office.

Q. You were in Seattle all day?

A. That is, except of course,—now, then, Mr. Morrison and Mr. Gunn both said that the securities—gave the same report regarding the securities which they held, regarding the payment of these



(Testimony of W. L. Tobey.)

bonds.

Q. Have you any reason to believe, now, Mr. Tobey, that at the time you were inquiring there, these bonds, as far as issued, weren't perfectly good?

A. I don't know that I understand that question.

Q. Have you any reason to believe now, that at that moment, when you were over in Seattle, that the bonds that were then issued and outstanding by the Washington Savings and Trust Company weren't perfectly good?

A. No, I don't know at that time whether they were good or not.

Q. Well, all that you learned was favorable; they were good?

A. What information I got was that they were good.

Q. Now, I want to know if, since that date, anything has come to your knowledge that contradicts that, and will tell you that at that date they were not good?

A. Why, from reports I learned the securities that they gave weren't all valid securities. They were more or less forged securities.

Q. As far as the Washington Trust & Savings Company was concerned, have you any reason to believe that the securities deposited with it weren't good for the amount of bonds that were outstanding?

(Testimony of W. L. Tobey)

A. I don't know, because I don't know what was deposited with them.

Q. You are not familiar with what has been given in here?

A. No, not a thing, anything about what securities were given in.

Q. How many bonds at this time were outstanding?

A. At the time of our trade?

Q. At the time you were making the inquiry over at Seattle?

A. I don't know, only as DeLarm told me.

Q. What did he tell you?

A. He told me there was about 300,000 to 325,000 at that time issued.

I learned about the lands the company had at Wahluke at my first meeting with Mr. Humphrey, Mr. DeLarm & Mr. Hodges, 4000 acres, and an option on Northern Pacific lands for 10,000 acres. They may not have mentioned the 10,000 acres possibly at the very first meeting, but I knew of it when I was over in Seattle. I learned it before our trade was made.

Q. Did you make any inquiries of the Northern Pacific Land Office to know whether that was so?

A. I did not.

Q. Did you ever make any investigation up at the county offices to see whether they had the deed recorded or mortgages recorded to verify their state-

(Testimony of W. L. Tobey.)

ments?

A. I did not.

Q. You knew what county the enterprise was in, didn't you?

A. Yes, sir, they told me what it was.

Q. Now, I wish you would explain to the court into the record here why it was that you neglected all of the ordinary investigations to verify the value of these bonds. You seem to have accepted them on their face value practically from DeLarm's statements.

A. Because in talking with DeLarm and with the other people that I met they impressed me as people that were square and honest and I had faith in what they were saying.

Q. Who do you mean by other people?

A. Why, DeLarm and Biehl.

Q. And you class Humphrey and Hodges in the same group?

A. Well, as far as Humphrey was concerned, he didn't—I had very little talk with him, only my first conversation. He just simply took me to Hodges. I had perhaps fifteen or twenty minutes or half an hour's talk with Humphrey. The balance of the deal was with the other men.

Q. Have you ever investigated the facts since whether or not at this particular moment these bonds were any good, the amount that were then outstanding?

(Testimony of W. L. Tobey)

A. I don't know that I understand that question, Mr. Wood.

Q. At the time you were over at Seattle, at the time you made your deal, if the total issue was limited to \$300,000. wasn't it good? Wasn't the enterprise good for that amount? And wasn't it the floating of millions of bonds that swamped the enterprise later on? Now, isn't that the fact?

A. I don't know whether they were good at that time or not. I was led to believe that they were good.

Q. And all your investigations led you to believe that they were good, didn't they?

A. At that time they did.

Q. And for some reason or other, you didn't go any further in your investigation. You didn't even write to the Northern Pacific?

A. No, sir.

Q. How long were you in Seattle?

A. I think I was there one day.

Q. Did you employ any attorney, or anybody to investigate for you?

A. No, I didn't employ any attorney at all.

Q. You went and saw one who refused to give you information unless he was employed?

A. I saw an attorney there, but I got no information whatever from him.

Q. I understand that you never delegated anybody to look up the question for you?

A. No, sir.

(Testimony of W. L. Tobey.)

Q. Either an attorney or anybody else?

A. No, sir.

Q. So that you came back from there satisfied; that is to say, you came back satisfied except on one point. Your inquiries had induced you from caution, to rate the bonds at only eighty per cent?

A. Yes, sir.

Q. And with that exception that you discounted them 20 per cent, you came back from Seattle satisfied?

A. Yes.

Q. Now, when was it that you had made this first contract for the sale of this land at \$120,000?

A. That was on the 25th day of February, 1911.

Q. 1911, 25th of February?

A. Yes, sir.

Q. And that was before you went to Seattle, was it?

A. Yes, that was before I went to Seattle.

Q. And when you came back from Seattle, you changed your mind on the value of the bonds?

A. Yes, sir.

Q. Where was this contract drawn up, this first one?

A. It was drawn up in Mr. Hodges' office.

Q. Portland?

A. Yes, sir.

Q. Who were present?

A. Mr. Hodges was there, and Mr. DeLarm. I

(Testimony of W. L. Tobey.)

think Mr. Humphrey was in the office; that is, out and in at different times; and my brother was there.

Q. Well, the Kilbournes weren't there, were they?

A. Well, I was just considering. This Mr. Edward Kilbourne was there.

Q. When the first contract was drawn?

A. Yes, sir.

Q. And then what was done with that contract? Each party take a copy?

A. Yes, I think so.

Q. Had E. C. Kilbourne and DeLarm examined that farm before that time?

A. Yes, sir.

Q. DeLarm wouldn't take it without an examination?

A. No, he wouldn't give any answer without an examination.

Q. Well now, when did you come to the conclusion that you would let DeLarm have it, provided DeLarm was willing to take it, and he said he had a friend over in Seattle he would want to examine it before he would take it, as he knew nothing about farm lands?

A. When did I decide to make the trade?

Q. As I understood your direct, you said you concluded you would make the deal, but DeLarm said he wouldn't bind himself until he had had it experted by a friend in Seattle.



(Testimony of W. L. Tobey)

A. Yes.

Q. Did any such conversation take place?

A. He wanted to see the property, and have his friend go with him to see it.

Q. Yes. Well, what was the sense of DeLarm and his friend going to see it, unless on your part you were willing to trade?

A. Well, I was willing to trade, provided I found what he told me was true; that is, I was satisfied with his bonds.

Q. Now, when did this conversation take place about getting a friend from Seattle?

A. It was when he decided to go up and look at the ranch.

Q. I am trying to get the date, as near as I can.

A. Well, it was just very shortly before the 24th of February.

Q. And he either sent for E. C. Kilbourne then at Seattle, or came over with him. Which was it?

A. Well, I am not sure as to that, but I think he sent for him.

Q. It is not material. I don't care. They two got together. How soon did they get together?

A. My memory was that Mr. Kilbourne was in Seattle, and he sent for him to come down.

Q. He came right over did he?

A. That is what I suppose.

Q. And you and your brother and DeLarm and E. C. Kilbourne went out to look at the land?

(Testimony of W. L. Tobey.)

A. No, sir.

Q. What are the facts?

A. My brother didn't go. Mr. Kilbourne and Mr. DeLarm and myself went.

Q. You said you *lefthere* on the night train.

A. We were in Arlington on the 24th day of February.

Q. 24th day of February?

A. Yes, sir.

Q. That is coming out?

A. Yes, sir.

Q. You spent one day at the ranch, looking it over?

A. Yes, sir.

Q. And when you were taking them back to the railroad at Arlington, you wanted to know what conclusion they came to.

A. Yes, sir.

Q. And what did Mr. DeLarm and Kilbourne say?

A. Mr. DeLarm and Mr. Kilbourne both said they were satisfied with the property. It was as represented.

Q. And was the agreement drawn then?

A. The agreement was drawn the next day, the 25th.

Q. You went right down with them?

A. Yes, sir.

Q. Went to Hodges' office the next day and had

(Testimony of W. L. Tobey)

the contract drawn?

A. Yes, sir.

Q. And then you went to Seattle to look at your end?

A. I did.

Q. About the bonds, and then you came back and raised the price \$20,000.

A. On my return from Seattle, I told my brother I wouldn't accept the proposition; that is, the \$120,000.

Q. Well, you told DeLarm that too, didn't you?

A. Yes, I told him that.

Q. Well, where was that conversation?

A. That I told DeLarm that?

Q. Yes.

A. In Seattle.

Q. Over in Seattle?

A. Yes, before leaving there, I told him that I wouldn't accept the \$120,000.

Q. Where was it you told him that?

A. It was in a restaurant where we took dinner.

Q. Who were present?

A. I think no one but Mr. DeLarm and myself at that time; possibly Mr. Biehl might have been present, but I think not. I think it was after Mr. Biehl had left us.

Q. And he accepted your decision did he, of \$140,000?

A. Not at that time, no.

(Testimony of W. L. Tobey.)

Q. What did he say?

A. He said that he would consider the matter, and if he decided to accept the proposition that I offered, he would come down to Portland.

Q. And how soon did he come down to Portland?

A. Well, within one or two or three days, I would say; very shortly after that.

Q. Did DeLarm make any counter proposition to you at that time, in the restaurant, or at Seattle at all?

A. I don't think he did. Of course, he hung out for the price of \$120,000.

Q. Well, as I understand it, at the meeting in Seattle, in the restaurant, your mind was made up that you would let the land go for \$140,000., and you so told him?

A. No, I didn't. I didn't tell him that there.

Q. Well, you state the facts.

A. We had been asking, or had asked \$25 an acre for the land, and I told him at our meeting in the restaurant, that I would accept \$35. per acre in the bonds; that is, provided my brother, after we got back here, was suited with it.

Q. And that is the proposition that he said if he concluded to accept it, he would come down?

A. Yes, he said he would consider, and he might come down and take the matter up further.

Q. What further did you hear from him?

A. Well, within a very few days he came down

(Testimony of W. L. Tobey.)

to Portland.

Q. Yes, but now, that proposition wasn't \$140,000, was it?

A. No, the \$140,000 wasn't mentioned in Seattle.

Q. Let's get at the real contract that was drawn. When did you agree, then, on that?

A. On the \$140,000?

Q. Yes.

A. At a meeting we held here in Portland after seeing him in Seattle.

Q. And that was the result of a compromise you made between \$120,000 and \$35 an acre?

A. Yes, sir.

Q. And when was that final contract drawn?

A. The final contract?

Q. The one that is in evidence here?

A. On the 4th day of March.

Q. Where?

A. Where was that drawn?

Q. Yes.

A. That was drawn in Mr. Hodge's office.

Q. And by whom?

A. I think that Mr. Humphrey— — —

Q. Drew that. Who was present?

A. Mr. Humphrey, and Mr. DeLarm and Mr. Hodges, my brother, and I think—well, they had the stenographer there, of course.

Q. Well, the Kilbournes weren't there that time, either of them, were they?

(Testimony of W. L. Tobey)

A. I couldn't state for sure whether the Kilbournes were there at that time or not.

Q. Now, when did this contract ripen into a deed? How long after that.

A. Well, it was made on the 15th day of March.

Q. So that would be ten days or so later?

A. Yes, sir.

Q. What was the cause of the delay?

A. I think in our contract for the sale of it, it was stated that they were to give a certain length of time in which to prepare the abstracts.

Q. You prepared the abstract?

A. Yes, sir.

Q. To whom did you deliver it?

A. The abstracts were—I think the abstracts were delivered to Mr. Kilbourne.

Q. You didn't have an abstract ready with Mr. Sherlock?

A. No, not with Mr. Sherlock.

Q. You had to have it prepared?

A. We had an abstract, but we didn't have it brought up to date.

Q. And you had it brought down to date, and where was Mr. Kilbourne when it was delivered to him?

A. I think in Mr. Hodges' office.

Q. And how long after the signing of the contract of March 4th, would you think that was? How long before the delivery of the deeds?



(Testimony of W. L. Tobey.)

A. I think the abstracts were placed with the abstracter for completing immediately after the contract was signed.

Q. And how long before you got them and delivered them to Mr. Kilbourne—got the completed abstracts?

A. That is so that Mr. Kilbourne was satisfied with the abstracts?

Q. How long after the contract was signed, did you give Mr. Kilbourne abstracts for him to examine?

A. Oh, I can't tell the exact date.

Q. You are sure you gave them to Mr. Kilbourne, are you?

A. I am satisfied either Mr. Kilbourne, or in his presence in the office there.

Q. I am talking about the abstracts?

A. Yes, sir.

Q. How long before the deed was signed?

A. I can't give such dates as that. That would be hard to remember, just the dates.

Q. I know, but how long—you signed the deed March 15th, didn't you?

A. Yes, sir.

Q. How long before that did you deliver the abstract?

A. Well, I think as soon as the contract was drawn for the sale of the property. The abstracts then were sent to the abstract office.

(Testimony of W. L. Tobey.)

Q. That didn't help the buyer any. That didn't help DeLarm or Kilbourne, when you sent to the abstract office. I am trying to find out when they came back from the abstract office, when they were given to DeLarm, Kilbourne, or anybody that represented the buyers.

A. I cannot give exact dates.

Q. I don't want exact dates; as near as you can fix it before the deed was executed, how long a time did they have the abstracts in their hands?

A. I would say it was about the time the deeds were made.

Q. Now, who delivered these abstracts from the abstract office? Were they delivered by the abstracter to DeLarm or Kilbourne, or somebody representing them, or were they delivered to you?

A. No, I can't tell that whether they were delivered to me, or whether they were delivered to Mr. Kilbourne.

Q. Do you remember delivering them yourself to anybody?

A. I remember of handling them at different times, having them.

Q. The complete abstract, the finished abstract brought up to date, you had them in your possession?

A. At different times, I had them, yes, because we went to the man who examined the abstract here in the city;—abstracts were gone over at that time.

(Testimony of W. L. Tobey)

Q. Now, Mr. Tobey, I want to call your attention to your direct examination, in which you said that when DeLarm said to have the deed made out to Kilbourne, at the time it was delivered there, Kilbourne being present, that was the first inkling you had that Kilbourne had any interest in the transaction.

A. When the abstracts were—when the deeds were being drawn, or getting ready to prepare the deeds for drawing was the first we knew then that Mr. Kilbourne was interested in it, yes.

Q. If you had been delivering abstracts to him before that, wouldn't you have known he had an interest in it?

A. I say, I don't know that we delivered the abstracts to Mr. Kilbourne, I don't know— — —

Q. You said just now you delivered them, either to Kilbourne or to DeLarm; you didn't know which one of them.

A. Well, I do say so.

Q. But you ought to know you didn't deliver to Kilbourne, if it be true that the first idea you had he had any concern in the matter, was the day you were drawing the deed.

A. Well, but the abstracts weren't received back from the abstracter's office as soon as the contract was drawn.

Q. I am talking about the delivery of the deed. Weren't the abstracts received back before the deed

(Testimony of W. L. Tobey.)

was drawn?

A. I don't think it was. Were perhaps about that time.

Q. Now, let me refresh your memory. I think you are getting nearer to it. Mr. Kilbourne never saw these abstracts until DeLarm informed you people that he was to take the deed, and at the same time, with the deed, Kilbourne for the first time in his life got the abstract, and wasn't all that delay after that caused because they couldn't get their loan from Balfour Guthrie until they had passed on the abstract and were satisfied with the title? Isn't that so?

A. I suppose they couldn't get their loan until the abstracts were completed and found correct by the loan company.

Q. Doesn't that refresh your mind, and isn't it true that Kilbounre got the deed and the abstract at the same time?

A. Well, I haven't said that he didn't get them at the same time.

Q. Now, Mr. Tobey, you said that Hodges was always talking about some securities that he had in a tin box at the hotel, actual securities, that he always put you off. Does that state what you said? Do you remember that?

A. That is the substance of it, yes.

Q. Didn't that make you suspicious of Hodges; that a man had a tin box full of mortgages and se-

(Testimony of W. L. Tobey.)

curities as collateral and put you off with excuses all the time?

A. I never really demanded to see the securities more than at different times he had contracts there, and would show them to me.

Q. You said in your direct that he always kept putting you off with some excuse or other, as if you were asking?

A. Yes, whenever anything was said about securities, he said he didn't have them in his office, because he had no safe or deposit box there, and he kept them in the deposit box which I believe was in the hotel.

At the time the deeds were executed Mr. Hodges, Mr. DeLarm and Mr. Kilbourne and, I think, Mr. Brazell, if I remember right, were there and the parties to the deeds. It was done in Mr. Hodges' office in the Chamber of Commerce Building. He had three rooms and I think we were in the room occupied by Mr. Hodges when the deeds were signed. I would not be sure as to the exact room. When the deeds were being prepared, I think his attorney prepared the deeds, this man Brazell, that is my recollection now—and he instructed him to draw them to Mr. Kilbourne, and told us that he had disposed of the lands to Mr. Kilbourne. That was the day the deeds bear date, March 15th. That was the first indication we had Kilbourne was in it.

Q. Now, I wish you would think a little bit and

(Testimony of W. L. Tobey)

see whether it isn't so, that when you went to finish up this business, receive the bonds and deliver the deeds, that you and DeLarm and the others were in Hodges' inside room, and Mr. Kilbourne remained in an outer room. He was not in the same room, and in the immediate group when you closed this transaction?

A. When the deeds were executed?

Q. Yes, and you got your bonds.

A. No, I couldn't say as to that positive, but very—they were all in and out of the office.

Q. As a matter of fact, though, you didn't take these bonds without counting them, did you?

A. They were counted over there, yes, sir.

Q. And don't you remember that you retired to a private room to count the bonds?

A. No, I do not.

Q. Did you count them in the presence of anybody?

A. I think we did.

We went to Mr. Chamberlain's office because that was the attorney that was being employed, I supposed, to examine the bonds for the loans which were being made, the loan that Mr. Kilbourne got, the \$20,000 loan from the Balfour Guthrie Company. I didn't have anything to do with that more than to go and see what objections Mr. Chamberlain made to the title. The deeds and bonds were placed in escrow, my memory is, because of the corrections that



(Testimony of W. L. Tobey.)

were to be made on the abstracts and the title demanded by Balfour Guthrie. Mr. Kilbourne had nothing to do with the deposit of \$6000 bonds with a note for \$3000. We put up \$6000 of the bonds as security for the \$3000 note. Kilbournes really had nothing to do with that as far as I know. It was really a matter between DeLarm and us. While the notes were made payable to the Trust Company, yet all of our talk and arrangements for the loan were with DeLarm. The note was signed by F. L. Tobey and W. L. Tobey. We were borrowing the money for ourselves. It was made a part of the contract in selling the land that we were to have this loan and DeLarm promised it to us. My brother and I put up the \$6000 bonds. They were some of the bonds we got from the company for our property.

As I remember Brazell, I think was one of the officers of the Trust Company, or one of the organizers, or had something to do with the Trust Company, as I learned afterwards. That is my impression now. He was an attorney and I think attended to their legal work. In my testimony when I have talked about Mr. Kilbourne in this examination, I refer to E. C. Kilbourne.

I hadn't seen C. A. Kilbourne at the time we made the contract for the sale of the property. I hadn't seen him until after the deed was delivered. I saw him about that time. I think I saw him one time when we were at Mr. Chamberlain's office ex-

(Testimony of W. L. Tobey)

amining the abstracts, when he was trying to get the money from Balfour Guthrie, during that period.

Q. When you were over in Seattle, you didn't look up E. C. Kilbourne, did you?

A. I didn't know that there was such a man.

Q. Why, you didn't go to Seattle until after they had been up on your ranch, did you?

A. No, not until after they had been to the ranch.

Q. Maybe I made a slip of the tongue. You had seen E. C. Kilbourne on the ranch. He was there with DeLarm.

A. Oh, yes, Edward C. Kilbourne—yes, I had seen him on the ranch.

Q. Then you saw him, and you now say in your pleading that you thought that he was a partner of DeLarm, associated with him.

A. At that time?

Q. Yes.

A. No, at that time, DeLarm, when he spoke of having another man go along, he represented that he was just simply a friend of his, an acquaintance that he wanted to go along and give his judgment on the place; that he was better acquainted with farm lands and farm values than he was.

Q. You knew that E. C. Kilbourne was that man when he came on the ranch?

A. Oh, yes; yes. When we made the trip to the

(Testimony of W. L. Tobey.)

ranch I knew that was the man, of course.

Q. And do you know whether anything was said about E. C.'s being DeLarm's engineer or irrigation expert?

A. Not at that time.

Q. When was that mentioned?

A. That wasn't mentioned at all. The first that I remember knowing of that, was about the time that the deeds were passed.

Q. As a matter of fact, when they went over the ranch, E. C. Kilbourne did talk to you, and questioned you about the *x* capability of its being irrigated, and so on?

A. I think that there was talk of irrigation at that time.

Q. By a pumping proposition?

A. I think so; or irrigation in some way.

Q. Now, then, to get back to the question you misunderstood. You had met Mr. E. C., Edward Kilbourne, up on the ranch, and you knew he lived in Seattle. When you went over there. did you call on him?

A. No, sir.

Q. Did you know that Edward Kilbourne was the engineer for the pumping plant at Wahluke, engineer for that irrigation project?

A. At the time I went to Seattle?

Q. Yes.

A. No, I did not.

(Testimony of W. L. Tobey.)

Q. Did you know at any time, and if so, when did you learn it?

A. Why, I think it was about the time that the deeds were passed, when we found that he was to be the owner of the place, that he was even connected with the company, in constructing the pumping plant.

The witness being asked if he knew anything about the deal by which DeLarm put water on the land and took half the land in payment said.

Mr. DeLarm had explained to us that the people who owned the land there—that they (DeLarm) would put the water on for half of their land. If they had 160 acres of land, by deeding half of that, 80 acres, to the company, they would put the water on the land, or they would charge them \$100 per acre for putting the water on.

I don't know that I knew anything about water mortgages. These bonds here are not all the identical bonds received on the trade of the 15th of March, 1911. There were a part of them exchanged for smaller denominations and the ones we received in exchange were of the first of June issue. I think it was about \$60,000 worth. We never sold any of our bonds. We made an effort to exchange and sell at different times, from the time we first got them and we never got any more of them in any trade. There were different propositions put up to us, yet we never made any trade.

(Testimony of W. L. Tobey)

I made one trade for my sister in law, about \$4200 in bonds and traded a piece of real estate for them. I do not remember the date. It was some time during the fall of 1911. The real estate was situated in Portland. The property belonged to my brother's wife and it was deeded to a man by the name of C. C. Randall.

We wanted to get these convenient small denominations to facilitate trading in these bonds, or trading or selling. That was some time during the summer of 1911.

Mr. DeLarm said that he had a place for this property and if he didn't, he wouldn't touch it. He did not indicate what disposition he intended to make of it, at the time we first spoke of that, and did not until the time when we found it was going to Mr. Kilbourne. He said then that he was turning it to Mr. Kilbourne in payment for installing the pumping plant. I asked the question, in a conversation we had. He said that he was selling these bonds for the purpose of raising money to carry on this project. I asked him how he could use the land—that he couldn't pay bills very well with that, and he said then that he had a place for the ranch and that he knew right where it was going.

Q. Did you ever recommend the purchase of these bonds to anybody?

A. We had a good many inquiries regarding them and sometimes I would tell them that I would

(Testimony of W. L. Tobey)

rather they would investigate for themselves, but that we had traded for them.

Olex and up around that part of Gilliam County belongs in the semi-arid section of Eastern Oregon. It is a light dry soil and depends to some extent on the rainfall, taking the country as a whole. It depends to some extent upon the snowfall and rainfall. Of course, if they get no rain, there would be no crop. That country as a whole depends upon precipitation, rain and snow for a crop.

Q. Now, didn't you have a series of discouraging years in 1908, 1909 and 1910, along there? Three bad dry years?

A. There were a few years there when the conditions weren't of the best.

Q. I would like a little more specific answer than that, if you feel you can give it. 1908, '09 and '10 have passed into history, haven't they, as three bad years right in succession?

A. No, I can't say that they were.

Q. That is not your recollection?

A. No, sir.

Q. You weren't desirous of getting rid of that land because it was too awful uncertain farming in that dry district?

A. Not necessarily so. We didn't care to live there regular, and we considered we rather have our property in some other place unless we wanted to live there, and look after it personally.



(Testimony of W. L. Tobey.)

Q. Wasn't there lots of land for sale cheap, and weren't people anxious to get rid of their land up there in the spring of 1911?

A. As to the cheap part, I can't say, but I will say that ever since I have been in the country, nearly every place in Oregon you are minded to go, most everything is for sale.

Olex is in a direct line, perhaps 18 miles from the Columbia River. The further back from the river, the more precipitation you get, to the mountains, and, of course, in the mountains you get more than the lower lands. The mountains are about 60 miles back.

#### Cross Examination.

(By Mr. FLEGLER.)

When possession of the land was given, it was given to Mr. Kilbourne; as far as I know he has been in possession of it ever since. The deeds were all recorded and were in the name of Mr. Kilbourne to all of this property. The first time we learned of this fraud was at the time they went into the hands of a receiver—into bankruptcy—during the latter part of January, 1912, just shortly before the interest period. I placed the matter in the hands of my attorney. I can't state the exact time but somewhere two to four months, I would say, after that time. Did not immediately place any notice on the records of the fact that we had been defrauded. I employed an attorney and just what time he served

(Testimony of W. L. Tobey.)

notice I can't say. I can't say just what time the suit was brought or what time the first notice was given.

I had a communication from someone in Seattle, asking for a valuation of the land.

I remember of having a telegram or phone communication, but whom it was sent to I don't remember.

Defendant's exhibit D introduced.

A total failure of a crop would represent a loss of five or six thousand dollars a year. There have been years when the crops were poor. Some years there would be rather a short crop and most years have been good. We could raise sometimes a 15 bushel crop, sometimes a 20 bushel crop and sometimes a 25 bushel crop. 'If it fell below 10 bushels it was rather a poor crop. We did not often get a poor crop. We had some short crops. There was one year while it was rented it was below 10 bushels.

The price of wheat varies from 70 to 75 cents, sometimes even higher than 80 cents, and in addition to plowing and seeding we had to haul the wheat to market; you would have to have it threshed, harvested, etc. There wouldn't be much left if we got below 10 bushels to the acre. I don't remember how much we realized out of the place the last two or three years. We kept no book account of it, so that I could not give the figures, even a rough estimate, not anything at all accurate. Now at the time I knew it,

(Testimony of W. L. Tobey.)

but I don't now.

Q. And you have that land under all these conditions for sale, but were not able to sell it on a straight sale, but concluded that you would trade it.

A. We did not sell it, we had made efforts to sell or trade it.

Q. But finally concluded that the best trade that you could make was these bonds?

A. That was, yes, we were satisfied to take the bond trade at that time.

One tract something like two thousand acres we bought in one body. I cannot give the date of that, it was perhaps the year 1903 or 1904. We paid between \$10 and \$11.00 an acre for it. We bought it on a straight purchase.

Q. Has the country settled up there since you bought the land?

A. Why, there has been some new land plowed since that time. No, you can't say that it really has settled up, because at that time practically everything that was suitable for cultivation was being cultivated in that vicinity.

Q. No more population there than when you bought it?

A. No I don't think so.

Q. And it was generally unsettled?

A. Just about the same conditions as it is now. The time we bought it the crops were about an aver-

(Testimony of W. L. Tobey.)

age for the time that it had been farmed.

Q. What is it that has ever happened to it that would make it worth \$20 to \$25 an acre now?

A. Simply because of the increase of the population throughout the west, the people who have been coming here and farm values, the value of all property has greatly increased for a good many years throughout all Oregon.

Q. Not on account of the productiveness of the lands, nor the increase of the population, particularly in that locality?

A. No.

The population there hasn't increased for a great many years.

Q. Now, Mr. Tobey, let me use a homely and forcible expression and say whether you don't think a great many people in their experience there would consider that a God forsaken country?

A. We can always find people in any place that are dissatisfied with the country in which they are living, that is no exception to the rule in that.

Q. But a great many people *fell* just about as I expressed it, isn't that the case?

A. Why, possibly that is the case but that will apply to any place that you go.

I didn't know what Mr. Wakefield wanted in enquiring about the land, but that I don't know as he did. My impression is that I talked with Mr. DeLarm over the phone, and I didn't know that he

(Testimony of W. L. Tobey)

wanted to place a loan on it. I knew that the place never went into DeLarm's hands, that is in his name.

I knew that it was at Mr. DeLarm's request to put a valuation on it. It is possible that the telegram may have been sent to Mr. Wakefield, but it is my impression that it was all with Mr. DeLarm.

Mr. Wood produced a copy of the agreement of February 25th, 1911, between the plaintiffs and DeLarm.

Witness testified that that agreement was actually signed.

Witness being asked to fix the day of the week when he went over to the ranch with Mr. Kilbourne and Mr. DeLarm, stated, I can fix the day of the month, it was on the 24th day of February.

Witness testified that to the best of his recollection Mr. Kilbourne, was present when the agreement of February 25 was signed, but stated that there was no particular circumstance to fix Kilbourne's presence in his memory, that Kilbourne, had no word, or voice, or took any hand in it.

Copy of agreement introduced in evidence marked Defendant's Exhibit "E".

Redirect Examination.

(By Mr. WILLIAMS.)

Witness testified that at the time Mr. Kilbourne and Mr. DeLarm went to the ranch with him that Frank had gone on ahead, and was there at the ranch when we got there.

(Testimony of W. L. Tobey.)

My purpose in exchanging the bonds of larger denomination for smaller ones was because we *though* we could dispose of them, either sales or trades to better advantage having smaller denominations. We had some prospective sales or trades where they stated they couldn't use the larger denominations. We never offered to sell or trade them for anything less than par.

My attention was called to the securities back of the bonds and the guarantee of the bonds by the Washington Orchard, Irrigation and Fruit Company, but I don't know that the trust agreement was called to my attention. Sometime afterwards we talked to Mr. Hodges about the trust agreement, but not at the time of trading. We asked to see the trust agreement and he stated that he did not have it, but that it was on file, I think, with the Secretary of State of Oregon, and I wrote them and found that it wasn't. That was after we closed our trade, during the summer sometime, then I wrote to the County seat of Grant County, where these lands were located to know whether it was recorded there and they stated no that it wasn't. This was sometime after we had traded.

The reasons why Mr. Chandler, gave up his lease to the premises up there, in the first place, he was a boozier and a drinking man, and very unreliable and his expenses for operating were more than they should be and he had no money to operate it with,



(Testimony of W. L. Tobey)

was owing Mr. Wade, very heavily and I suppose probably couldn't pay his bills all up, and I suppose he decided he wanted to get out of it and turned the lease over to Mr. Wade. Mr. Wade's reasons for surrendering the lease was that he had a store there and he has to personally take charge of that; he also owns one or two ranches, did at that time, quite a large ranch he had to take charge of this personally, and he also had ranches under his control that he had mortgages on, both chattel mortgages and crop mortgages, and he had to take lots of his time to look after that, and he just had more than he could do to look after everything and he wanted to get out of it. There was one year that Mr. Wade, had it when the crop was poor, my impression is that it was the first year, 1909, the other year was good.

We received enough from the proceeds of the ranch to support the two families. We had some indebtedness and paid it out of the proceeds of the ranch. The purchase price of the 2400 acre tract, which was purchased about 1901 or 1902 was \$25,000.00, for the land alone. We made a small payment in cash and the remainder was paid up in crop payments each year until the land was paid for. We gave half the crop each year or the proceeds of the sale of half of the crop and paid interest at 8 per cent. on the unpaid part. We were about six years in paying this up. We paid this all up from the grain raised on this particular piece of land. We

(Testimony of W. L. Tobey.)

bought some of the land from the school land, this was some of the pasture land that we bought with script, two pieces and we paid somewhere from six to eight dollars an acre. I don't remember how much there was in this. At the time, we bought this land wheat ran around the 50-cent mark and it was gradually increased in value up to 70, 75 or 80 cents and even higher than that since. It has gradually increased during this term of years so that wheat was worth much more when we sold this ranch than it was at the time we bought it. I think the first crop that we raised we sold for 59 cents. It hasn't been down that low in the last four or five years.

The method of cultivation has nearly all to do with the amount of crop raised. It is necessary to farm this land in a manner to conserve the moisture. We do that by cultivation after plowing to prevent evaporation. We do this by using harrows or tools to loosen the surface of the ground for a very shallow depth. This method of cultivation was a matter of development. It wasn't largely practiced at the time we started farming as it has been in later years. The land at the time we turned it over to Mr. Kilbourne, was in very good state of cultivation. It was in much better condition than when we first got it, and the improvement and the cultivation of the land would have the values. We put up machine sheds and granary and put down a well or rather a reservoir for domestic use.

The coupons are not on these bonds now. They

(Testimony of W. L. Tobey.)

were cut off at the time of the interest period intending to send them here to Portland, to the bank to collect the interest. We had the bonds with us where we are now living at Merlin.

I have made *a* effort to ascertain the date of the paper that the collapse of this scheme first came out in. The date was on the 1st day of February, where a receiver had been appointed in Seattle. I had these coupons ready to send to Portland, at that time, I had them already, a letter written already to mail to the bank here for the collection of the interest when this came out in the paper, and I held them. I turned them over to Mr. Woodcock with the bonds. I never received *on* cent on these coupons, and have never negotiated a sale of them.

At the time I sent that telegram to Seattle, I did not know the purpose for which they wanted valuations up there. I did not know what the purpose was. We spoke of it at the time, wondering what they wanted that information for. We had negotiations with DeLarm, about trading these bonds for lands within the Wahluke project after our deal. They had told us that we could trade the bonds of course, for any property which they had, either property in the project or any other place. We decided that if we could exchange these bonds for this land at Wahluke developed, that is as an alfalfa proposition that we would take it in that way and we went to them and made them a proposition or

(Testimony of W. L. Tobey.)

asked them if they would consider developing sufficient land and at what price to take up the bonds, and we made an effort to do that with them.

Q. When you entered into the contract, the 4th of March, 1911, with DeLarm, was there more than one copy of that contract made, was the contract made in duplicate?

A. I don't know for sure whether it was or not.

Q. Did DeLarm have a copy of it?

A. Continued, but it is my memory that it was, I wouldn't be positive about that.

Q. At the time you turned over the deed for the land were any contracts surrendered to you for cancellation by DeLarm, was the contract surrendered to you for cancellation.

A. I think not.

Recross Examination.

(By Mr. WOOD.)

There was about two years while we were living at Olex, that we were not in the merchandise business, we had sold that. For a part of the time when we first bought the ranch I took charge of the store and my brother was on the ranch, until we sold the store. We sold it to a man named Lawrence. We never resumed merchandising at Olex. We moved out on the ranch for a short time, a part of one year perhaps, I don't remember the exact length of time, and then moved back into Olex again. We were in Olex ten years. Between six and seven of

(Testimony of W. L. Tobey.)

these we were in the store and the balance of the time lived there and took charge of the ranch. We leased the ranch at the time we came to Portland. We had charge of the ranch up to the time of leasing and when we had leased it, then we came to Portland to live. We operated the ranch ourselves, I think, for about eight years, if I remember. My brother and I were always partners and we kept no books showing income and outgo, we kept books in the merchandising business, but didn't keep them for the ranch because we did not think it was necessary. We didn't go to that trouble to keep a set of books for the ranch.

Mr. Chandler, had practically the 4000 acres when he was operating the ranch. When we were operating the ranch ourselves, almost every bill was paid by checks and in that way we could know about what the operating expenses were, that you may say was the only books we had to determine anything about the expenses. We figured that the expenses of operation would be somewhere about seven thousand dollars for the ranch. About half of it was in cultivation in each year. There was about 4000 acres of farm land and we farmed half a summer, fallowed the other half. We followed the Campbell system of dry farming to some extent, not in full.

The number of times that we harrowed for mulching depended largely on the conditions. If a year with lots of moisture after plowing so the weeds



(Testimony of W. L. Tobey.)

started would require lots of harrowing to keep the weeds down. Sometimes the ground would be gone over six or seven, or eight times, on an average it wouldn't be that many times. There might be some pieces, some years, perhaps, when we would do this. The dry farming system is expensive. It would be more expensive, of course, than it would be where they simply plowed and let it go without any more cultivation. The farmers had a good fair crop in the year 1907. I don't know whether it was a phenomenal crop or not, I know that we had a fair crop that year. It is possible there may have been one year that would be a little better than the average year, but we did not have three bad years. We have no record of the exact yield for any year, as we kept no books.

Of course, the more we raised the more dollars we had. I couldn't be positive, and I couldn't give the exact yield on the last year that we had it, my memory would be that it would be somewhere between fifteen and twenty for the year 1907. The last year before we sold it as I remember it, that was a very fair yield. Now as I stated before there was one bad year that Mr. Wade had it, and I am not positive whether it was the first year or the second year, but to my memory is, the first year that he had it was bad, the next year was fairly good. For the bad year the yield was very small. I can't give you that at all. I would not have any idea what it was. I



(Testimony of W. L. Tobey.)

know it was very small. I couldn't say positively that Mr. Wade lost money, the two years he operated the ranch, because I do not know what his operating expenses were. I do not know what the yield per acre was.

The last year we had it, it is in a general way remembering it, my memory would be that it was somewhere in the neighborhood of fifteen or twenty bushels per acre. Yet I would not be positive as to that, and I do not remember the prices per year.

We were shown the bonds when we first started negotiations with DeLarm for the trade of the place. I had them in my hands. I cannot say that I read them all through or not. I presume I did, although I do not know. I do not know that I noticed on the face of the bonds an allusion to the trusteeship, or the deed of trust. Mr. Hodges, told me that the trust agreement was recorded with the Secretary of State and I found out it wasn't. Afterward he told me the securities were locked up at the hotel, but this was after we had traded.

Q. Well, you had seen enough of Mr. Hodges, according to your statement to know that he was deceiving you and lying about that particular fact? Did you then start a line of investigation to see where this trusteeship did lie?

A. I made an effort to find it, yes.

Q. What did you do?

A. At last they produced it in the office and I

(Testimony of W. L. Tobey)

saw the trust agreement there.

It was the office of Mr. Hodges', that was after the deal had been made.

COURT: During the time you were investigating these bonds between the date of the first statement, and the agreement of March 4th, did you see the records of either of these corporations?

A. That is the records regarding their securities, etc?

COURT: No, no, the records; the books of the corporation.

A. Oh, no, I did not.

COURT: Did you ask to see them?

A. No, sir.

COURT: Did you make any inquiries as to who the incorporators were, or the amount of the stock?

A. No, I don't think that I did.

COURT: You didn't ask to see the records of the bonds, to see how many bonds had been issued?

A. No.

Q. Mr. Tobey, you stated on your cross examination, in answer to certain questions of mine, that you asked Mr. DeLarm how on earth he was going to use the land to get money, and he said he had a place for it, etc. You knew that he was hard up for ready cash at that time, didn't you?

A. No, I didn't know anything about it, whether he was or not.

Q. Didn't you testify that you said to DeLarm

(Testimony of W. L. Tobey)

“How are you going to pay your debts with land?”  
And he said he had a place to put it?

A. Yes, sir, he did.

Q. Then you knew he had debts, and was skirmishing around to get your land to help pay them?

A. He told me he was disposing of bonds to raise money to finance this proposition.

Q. Then do you remember a \$500 check of DeLarm's that was returned for lack of funds?

A. Yes, sir.

Q. Yes, when was that?

A. That was when we were getting the second loan for \$3,000.

Q. That was the loan that was to come to you?

A. Yes, sir.

Q. That showed you that he was hard up, didn't it?

A. It did, right at that time, yes.

MR. WOODCOCK: That was after the transaction, though, after you had made the deal.

A. That was after we had made the deal.

Redirect Examination.

(Questions by Mr. WILLIAMS.)

One question I would like to ask. It should have been asked on direct, but was overlooked. Mr. Tobey, when Mr. Kilbourne and yourself and Mr. DeLarm, was upon the ranch, was anything said there about selection of the stock which was to remain there?

(Testimony of W. L. Tobey)

A. Yes, there was.

Q. What was said about that?

A. Well, the stock was looked over, and of course there is always a choice; there is some better animals than others, and he spoke about wanting to select the stock. They wanted to select the stock, and we told him no, we would select that ourselves.

The farms up on Gilliam County, run from 160 acres up to six or eight thousand acres, generally large.

#### Recross Examination.

Mr. DeLarm told me that the Kilbournes were taking over this land in payment of work in creating the power plant, that he was paying for the power plant in doing this.

#### [Testimony of G. H. Plummer, for the Plaintiff]

G. H. PLUMMER, being called as a witness on behalf of plaintiff, testified:

(Questions by Mr. WILLIAMS.)

I reside in Tacoma, Washington; have resided there for twenty-four years. My age is 45, and I am Western Land Agent of the Northern Pacific Railway Company, and I am familiar with the irrigation scheme at Wahluke, promoted by the Columbia River Orchard Company. I was acquainted with W. E. DeLarm, and slightly with A. J. Biehl. I was up over the project once and spent the greater part of one day there.

(Testimony of G. H. Plummer.)

I am familiar with the lands owned by the Northern Pacific Railway Company there. The company originally owned one half of the whole area under the project. They sold to the Columbia River Water Company, a power house site on the bank of the Columbia River, and also the right of way for the canals that they had constructed. Other than that we own all of the lands in the odd sections constituting approximately half of the total acreage under the project.

In February, 1908, we received an application from G. W. Armstrong, who represented himself as the manager of the Columbia River Orchards Company, for the purchase of three sections, sections 9, 11 and 15 in Township 14—26 East, which sections are part of the land underlying the project and immediately surrounding Wahluke, the townsite. The application was denied. I told Mr. Armstrong that the lands were not for sale.

There were from time to time a number of applications made on behalf of the company that DeLarm and Humphreys represented, but up to the latter part of 1911, we always declined to sell the lands. The reason was that these lands formed a part of a larger irrigation project known as the Priest Rapids Irrigation scheme, which contemplated the irrigation of between fifty and sixty thousand acres of land and we had reserved all of our lands under the project, which consisted of about half of the total acreage for a number of years hoping that



(Testimony of G. H. Plummer.)

at sometime, in the future, we would find somebody who would be able to finance and carry out the larger project, which of course, meant a great deal more to us as a transportation company than the irrigation of a small area. Our reason for refusing the sale of these particular lands under the Wahluke project was that they formed some of the best land and the more easily irrigated, I say most easily irrigated, meaning most cheaply irrigated, and we felt that if we should sell any part of the lands on the lower flat where this Wahluke lands are that it might delay the construction of the larger scheme, therefore we declined to sell them, and so informed Mr. Humphreys. His application was made in July 1909.

The next application was made in June 1910, by E. C. Kilbourne. Mr. Kilbourne was representing at that time the Columbia River Orchards Company. I had a personal interview with Mr. Kilbourne, about the matter on June 9, 1910. I told Mr. Kilbourne, that the lands were not for sale, and also followed that up by a letter written the same day after my interview with him, in which I stated that none of our lands in that vicinity is for sale at the present time. All our holdings are being reserved under instructions from the land commissioner Thomas Cooper, of the Northern Pacific Railway Company at St. Paul.

At that same interview I had a conversation with



(Testimony of G. H. Plummer.)

Mr. E. C. Kilbourne in regard to the sale of the right of way for the ditch and power house. Mr. Kilbourne explained to me the physical condition pertaining to the construction of the canal and the pump house and what it was designed to do, and I told Mr. Kilbourne, that an application, which had been previously made to us by Mr. DeLarm, for the purchase of the right of way and the pump house site, had already been submitted to our Land Commissioner, and that as soon as the Land Commissioner came west, which he contemplated doing in a few weeks that I would discuss the matter with him and would then advise the Company whether or not we would sell the right of way and the power house site. At that time we had made no agreement with them to sell the power house site or the right of way for the canal.

On August 2, 1910, I wrote a letter to the Columbia River Orchards Company, offering to sell the pump house site and right of way at \$50. per acre and requesting them to limit the width of the right of way to an amount that was sufficient to maintain the canal which I suggested should be 50 feet wide and I told them that as soon as they had prepared a description and figured out the acreage that we would be prepared to close the sale. The sale was finally closed on September 22, 1911. After they had advised me, thru Edgar J. Wright, of the exact area of the right of way, which was 57.88 acres and

(Testimony of G. H. Plummer.)

upon payment of the balance of the consideration. Mr. Wright had paid in June, \$2700.00 towards the right of way, which was merely a first payment, because they hadn't yet determined what the acreage was, so we couldn't figure up what the consideration would be. That was June of 1911. That money was held until September of the same year, when they gave us the acreage and paid the balance of the consideration \$194.00. We then prepared a deed running to the Columbia River Water Company, which was made to that company at the request of Mr. Wright, That deed was sent to St. Paul, for execution and was delivered to Mr. Wright, on November 1, 1911.

Witness produced a copy of that deed, which was admitted in evidence, Plaintiff's Exhibit 4, subject to objection as being immaterial and irrelevant.

In October of 1911, A. J. Biehl, called at my office and made an application for the purchase of the land belonging to the Northern Pacific Railway Company, within the project, and he also was told that they were not for sale.

I do, not recall the conversation I had with Mr. Kilbourne, excepting so far as it might be recalled by a letter that I wrote him following my talk with him, which is the letter I referred to before of June 9, 1910, in which I said that none of the lands of the company in that vicinity were for sale.

Q. Now, did Mr. Kilbourne, call at the office

(Testimony of G. H. Plummer.)

there in Tacoma, in regard to the purchase of the right of way and site for the pumping plant.

A. He spoke about that at the same time, on that same day June 9, 1910, and in this letter that I have just referred to I told him that I had submitted the matter of the sale of the right of way to our land commissioner with a recommendation that it be sold. On July 1st, 1910, Mr. Kilbourne wrote me a letter. The letter was read into the records as follows: "July 1, 1910.

Northern Pacific Land Company,  
Tacoma, Washington.

Attention of Mr. Plummer.

Dear Sir:

The Columbia River Orchards Company is anxious to arrange for the right of way for the canal for their irrigation plant at Wahluke. You stated that the matter would be taken up on the arrival of Mr. Cooper whom you expected about the 25th of June. We write to remind you of the matter as we presume you have a multitude of affairs to take up with him and this one might be overlooked. If you will be so kind as to notify us when you will have time to see us, we will come over.

Very truly yours,  
Kilbourne and Clarke Company,  
Engineers for Columbia River  
Orchards Company,  
By E. C. Kilbourne, Manager."

(Testimony of G. H. Plummer.)

On July 11, 1910, I addressed a letter to the Columbia River Orchards Company at St. Paul in reference to the right of way for the canal across our land, and in that letter I suggested that another company, the Columbia Valley Reclamation Company, in which Mr. Strahorn and Henry J. Pierce of Spokane were interested, were figuring on building the larger project that I referred to at the beginning of my testimony, and that it might be possible that the Columbia River Orchards Company could make some arrangements with the Columbia Valley Reclamation Company to procure water from their system, thus avoiding the construction of an independent plant to irrigate the small block of lands around Wahluke. I had, however, in the meantime received authority from our Land Commissioner to sell the right of way and pump house site, and after some correspondence between the Columbia Valley Reclamation Company and Columbia River Orchards Company it was determined that the Reclamation Company's project would not be constructed and therefore the Columbia River Orchards Company would not be able to get water from that larger system. That being determined I wrote the Columbia River Orchards Company on August 2, 1910, quoting them a price of \$50 per acre for the right of way and the pump house site.

Late in 1911, the matter of selling our lands in the project was taken up at the request of R. S.

(Testimony of G. H. Plummer.)

Chapman, of Chicago, who had made some investigation of the Columbia River Orchards Company's project and had concluded that if our lands could be acquired he would undertake to finance it with a view of putting the Company in good shape and completing the canal, paying up the debts, and starting it off as a live concern. These negotiations started October 13, 1911. Mr. Chapman called on me with a letter from our Land Commissioner, and I discussed the matter with him pretty fully and agreed to go with him to look over the project on the ground, and on October 19, 1911, Mr. Chapman and Mr. DeLarm, and Mr. DeLarm's superintendent of canals and myself went over the project. I made a report to our Land Commissioners, advising him that the canals had already been constructed, a pump house had been built and machinery partly installed; that about \$200,000 had been spent and that in view of the fact that that investment had been made and the canal practically completed, I recommended that we sell the lands owned by our company below the constructed project, and in addition to that that we sell the lands above the constructed project but below a contemplated project upon condition that they construct the canal for irrigating the higher lands within a certain limited period. The Land Commissioner approved that recommendation and authorized me to sell the lands which aggregated some 8,923 acres, for \$30 an acre,



(Testimony of G. H. Plummer.)

payable one-sixth in cash, the balance in five equal annual instalments. That sale was never completed. The Northern Pacific Railway Company still own the lands within the project.

I wrote a letter, which might be termed an option on January 26, 1912, to W. E. DeLarm, Columbia River Water Company, agreeing to sell at any time before March 1, 1912, the 3400 acres lying below the constructed canals at \$45 an acre payable \$36,000 in cash before March 1, 1912, and the balance to be paid in ten equal annual instalments with interest at six per cent. That money was never paid. Mr. DeLarm, was representing the Columbia River Water Company.

#### Cross Examination.

(By Mr. WOOD.)

Mr. Armstrong's address at the time he wrote us was Kennewick, but a letter addressed to Kennewick, in 1908, was returned to us undelivered. He lived somewhere in eastern Washington. His company was the Columbia River Orchards Company, the same that Mr. DeLarm, afterwards succeeded to. I know of no connection between Mr. Armstrong and Mr. DeLarm.

I fixed the date when Mr. Armstrong called on me by a letter dated February 27th, 1908, in which he stated that he had called at my office and found that I would not return to the City until on the 28th.



(Testimony of G. H. Plummer.)

This letter was written from Tacoma, so I concluded from that that he had called at my office either the same day or the day before, finding me out he went and wrote this letter in which he explained what he wanted. I didn't have a personal interview with him. I had an interview with him on March 2, 1908. He renewed his application for the (*for the*), three sections of land near Wahluke, and on March 13, 1908, I wrote him as follows: "Referring to your application for the purchase of sections 9, 11 and 15, Township 14, 26 East, I have to advise you that the matter was submitted to our Land Commissioner who does not approve of the sale. I explained to you when in Tacoma that all of our lands underlying the Priest Rapids project had been reserved from sale for a number of years past and this reservation is still in effect. Yours truly, G. H. Plummer, Western Land Agent."

On June 1, 1908, he wrote me calling attention to the conversation I had with him about the three sections requesting our decision. He didn't receive my letter, and he added as a postscript also sections 15 and 23 in Township 13-19 except the south half of the southwest quarter of section 23. That constitutes an enlargement of his application to include the other two sections, making five sections of it that he applied for, with a part out of one. As a matter of fact, I think that three or four of the sections are fractional, lying along the Columbia River, which are

(Testimony of G. H. Plummer.)

not full sections.

On June 11, 1908, I wrote him: "Replying to your letter of the 1st instant in regard to sections 9, 11 and 15, Township 14, 26 east, and sections 15 and 23, Township 13, 19 East, I can add nothing to my former advice to you regarding these lands. The matter was submitted to the Land Commissioner but he was unwilling to authorize the sale of any of these lands. Same are being reserved from sale and I regret that we are not in position to consider your application to purchase."

He then took the matter up by letter with Mr. Arthur B. Lee of Spokane, who was one of our attorneys a partner of E. J. Cannon, our division counsel at Spokane. On June 27, 1908, he wrote Mr. Lee quite a long letter. He explained the physical condition to Mr. Lee. The substance of it is that the little land that he is asking for is right along the bank of the river and wouldn't interfere with the bigger project, or something to that effect. That is the point of it, and expressing his desire to see Mr. Lee and explain the matter to him more fully.

Mr. Lee turned that letter over to Mr. Cannon who gave it to Mr. Cooper—to the Land Commissioner, when he was in Spokane in the early part of August, 1908, and Mr. Cooper turned the papers over to me with a letter dated August 6, 1908, in which he said "Referring to the application of the Columbia River Orchards Company to purchase a por-

(Testimony of G. H. Plummer.)

tion of our low lying lands under the Priest Rapids project, as you are aware the position we have taken ever since our examination disclosed the possibility of carrying out the entire Priest Rapids pumping project is we were to keep it as a unit until the time came when the project would be commercially feasible. I do not know of any good reason for changing this position and it is very sure that if we sell the low lying lands that can be watered by gravity it being a low lift, it will be more difficult and perhaps impossible to ever get the higher lands irrigated. Therefore the application of the company named should be declined."

That was the termination of the Armstrong negotiations excepting that I thereupon wrote Mr. Cannon the substance of Mr. Cooper's letter, stating that the lands would not be sold and Mr. Cannon, acknowledge receipt of that letter, and I think that is the end of our negotiations with Mr. Armstrong. Mr. Cannon's letter was dated August 7, 1908, and his reply August 10, 1908.

The next person who came to see us was H. H. Humphreys. He came to see me. He came from Spokane in July 1909, and then he wrote me a letter on the Columbia River Orchards letter head from Spokane calling attention to a conversation that we had had some weeks before and stating that they would like to buy the right of way for the canal. The

(Testimony of G. H. Plummer.)

letter is dated July 23, 1909 and says: "You will recall the writer's conference with you some weeks ago relative to lands from White Bluff, in the vicinity of Wahluke, Washington, which our company proposes to irrigate. You will remember that I spoke to you about arranging for right of way for canal, and you asked that I furnish you with a blue print showing the lines of our ditches. Under separate cover, I am forwarding this blue print to you, and will follow this by the detailed description of route of ditches. We would like a right of way 60 feet wide, but if that, for any reason, was undesirable at any particular point, we could get along with 50 feet." I don't remember the personal conference referred to, or anything that transpired at that time. A blue print was later sent to us. (producing blue print) I believe that is the blue print. I would like to say that I believe there was another map furnished us showing a little more accurately the position of the canal thru two of those sections. I am not sure that that is the map covering all of the right of way. I made a memorandum for the chief clerk to color the lands that we owned on the map so I could see how our interests were affected.

Map put in evidence, marked Defendant's Exhibit "A."

They have marked all of the lands that we own in "red." This map originally came from them. They furnished it.

(Testimony of G. H. Plummer.)

Witness produced another map.

This map originally came from them.

Introduced in evidence and marked Defendant's Exhibit "B."

The witness' attention was called to the memorandum on the smaller map and answered I think that is the blue print that accompanied Mr. Humphrey's letter of July 23, 1909. Exhibit "B." The red marks were put on by an employee of my office and they represent the Northern Pacific lands over which the right of way goes. Not the total holdings of the Northern Pacific. The Northern Pacific would really own every odd section. The same answer was given to Mr. Humphrey as to lands but not as to the right of way. In the letter from Mr. Humphrey, he doesn't apply for agricultural lands, but only apply for the right of way because he was told that the lands were not for sale, but that I would recommend the sale of the right of way and the pump house. I wrote the Columbia River Orchards Company July 28, 1909, acknowledging the receipt of the letter of July 23, and the blue print showing the location of the irrigation canals at Wahluke, "for which you desire right of way 50 feet wide. I notice, however, that the property's pumping station"—that is a misprint, and should be "company's pumping station is on our land, Section, 13 North 25 East, and no reference is made as to whether additional ground will be needed for that purpose. I cannot say wheth-



(Testimony of G. H. Plummer.)

er our people will approve the sale of the right of way and site for pump house, but I am willing to submit the matter to the Land Commissioner when I have full information as to the lands required. You should limit your application to the smallest amount necessary to carry out your plans. Yours truly.” In response to that letter Mr. Humphrey wrote me on behalf of the Columbia River Orchards Company, a letter without date which was received by me August 5, 1909, in which he said that the pumping plant proper will be located down next the water on state land “of course contiguous to your section.” After that we had some correspondence about the sale of that particular tract that the pump house would be located upon, I claiming that if there were any private rights, that they were in the Northern Pacific Railway Company, and that they would have to buy from us.

He claimed that the pump house would be located below the meander line, and therefore upon state property, state shore lands, and it resulted finally in their recognizing our ownership of any private rights there, and they purchased the pump site, as shown on their maps. We sold them the entire lot. The pump house was situated on Lot 4, Section 3. Township 13, 25 East, and we sold them the entire lot. The date of that was in the deed, a copy of which has been introduced. Dated September 22, 1911. That deed is to the Columbia River Water Compa-



(Testimony of G. H. Plummer.)

ny. The deed was not made in pursuance to Mr. Humphrey's application, directly. The company that came afterwards, Mr. DeLarm and Mr. Wright, as we understood succeeded the Columbia River Orchards Company, and Mr. Humphreys. The original application was made by the Columbia River Orchards Company, thru Mr. Humphreys.

The original application came through Humphrey on behalf of the Columbia River Orchards Company and then later in the negotiation Mr. DeLarm and Mr. Wright, succeeded Mr. Humphrey and we did not know of any change in the name of the company until we were ready to make our deed when we inquired of Mr. Wright to whom the title should run, and he told us the Columbia River Water Company. In the meantime, however, in correspondence that we had with Mr. Wright he had suggested that he would want title taken in the name of James Ellison, who had intended to put up some money, but that was later rescinded and when he came to make the final payment—when we were ready to make the deed he requested that it be made in the name of the Columbia River Water Company.

E. J. Wright, paid for this land by a cashiers check that was handed to us by Mr. Wright June 26, 1911, for \$2700. That was the first payment. That deed conveys the pump house site and also the right of way 50 feet over all our lands. Mr. Wright, was acting as attorney for the company and presum-

(Testimony of G. H. Plummer.)

ably for DeLarm and Biehl.

The next application following Mr. Humphrey's application, is Mr. DeLarm's. He made an application for the purchase of lands and also took up the unsettled right of way matter, which was unsettled at that time, not paid for, and as a matter of fact I had not yet, when DeLarm entered the negotiations. authority to sell the right of way and pump house site, so that while the application was initiated by Mr. Humphrey it was completed by Mr. DeLarm, and his associates. That was by a personal interview on February 15, 1910. After a talk with Mr. DeLarm, I dictated a memorandum covering my conversation with him, I have that memorandum.

Mr. DeLarm said that surveys were being made to accurately locate the line of canal and the pumping station, and that as soon as the surveys were completed and maps prepared he would submit the map to us with formal application for the purchase of a pump house site and the right of way. He said that they had already procured a permit from the state to occupy the shore and bed of the river for their pumping station, which was supposed to be state land. Mr. DeLarm was advised by me that the matter of sale of the right of way would be submitted to the Land Commissioner and that as to our lands underlying their canal the same were not for sale.

From my memory I judge that DeLarm was alone

(Testimony of G. H. Plummer.)

at this interview, otherwise I would have noted it if anybody had been with him.

Mr. Kilbourne, came to see me on June 9, 1910. and while I am not sure I think that was the first interview I had with him. I fix that date by memorandum that I made on a copy of letter that I wrote DeLarm attached to my file in which I note some of the figures that he gave me in reference to the status of the project.

Letter read into the records as follows:

The copy of the letter is dated June 7, 1910. "W. E. DeLarm, Columbia River Orchards Company, 227 Henry Building, Seattle, Washington, Dear Sir: I submitted to the Land Commissioner your application for the purchase of a right of way across certain lands owned by our company in the vicinity of Wahluke and he advises me that he would prefer to leave this matter until he comes west in about three weeks when it will be given consideration. I will then advise you whether or not the right of way can be sold. Yours truly, G. H. Plummer, Western Land Agent." On the bottom of the copy of this letter appears the following notation made by me in pencil. "Plant 70 per cent complete cost \$36,000 to \$40,000. Canal will require about \$20,000 to complete. Said to be about 40 per cent completed. E. C. Kilbourne 6-9-10."

This signature to this letter is in my hand writing also. This has reference to the condition of the

(Testimony of G. H. Plummer.)

pumping plant and canals at the time of the talk with him.

Q. You understood at that time that E. C. Kilbourne, was only the constructing engineer for the plant, didn't you?

A. I don't know that I did. I may have known it, but I don't remember whether he said that was his capacity.

On June 9, 1910, the same date as my interview with him I wrote him this letter. I think I read that into the records in my direct examination. This is a letter to Kilbourne. I received a letter from Kilbourne following this.

Letter June 9, 1910, read into the record as follows:

Letter dated June 9, 1910, "E. C. Kilbourne, 307 First Avenue South, Seattle, Washington. Replying to your inquiry regarding lands owned by the railway company underlying the Columbia River Orchards canal, I beg to say that none of our land in that vicinity is for sale at the present time. All of our holdings being reserved under instructions from the Land Commissioner. I have already submitted to him the application made by President DeLarm for the purchase of a right of way for the canal and power house site, and the Land Commissioner has advised me that he prefers to leave the matter until he comes west the latter part of this month when he will look into it further and determine whether or not sale will be made. I am returning your map here-

(Testimony of G. H. Plummer.)

with as requested. Yours truly, G. H. Plummer,  
Western Land Agent."

Letter from Mr. Kilbourne, read into the records  
as follows:

"Kilbourne & Clark Company, Engineers, Designers and Constructors of Complete Power, Lighting and Irrigation Plants. Seattle, 307 First Avenue South. Portland, 109 Fourth Street. Charles A. Kilbourne, President and Treasurer, Fred G. Simpson, Secretary and Chief Engineer, Edward C. Kilbourne, Vice President and Manager. July 1, 1910. Northern Pacific Land Company, Tacoma, Washington, Attention of Mr. Plummer. Dear Sir: The Columbia River Orchards Company is anxious to arrange for the right of way for the canal for their irrigation plant at Wahluke. You said that the matter would be taken up on the arrival of Mr. Cooper whom you expected about the 25th of June. We write to remind you of the matter as we presume you have a multitude of affairs to take up with him and this one might be overlooked. If you will be so kind as to notify us when you will have time to see us, we will come over. Very truly yours, Kilbourne & Clark Company, Engineers for Columbia River Orchards Company by E. C. Kilbourne Manager. ECKLS." And the red rubber stamp of the Northern Pacific Railway Company, Western District, July 2, 1910, Land Department, Office of Western Land Agent.



(Testimony of G. H. Plummer.)

The blue print Mr. Kilbourne, speaks of sending was returned to him. I have reference here to another blue print from Mr. Kilbourne, made in April 1911, when Mr. Kilbourne called at the office during my absence and talked with my chief clerk about the Wahluke matter, and my chief clerk made the following memorandum on this letter in this file for me, and later was dictated by me to the Columbia River Orchards Company. This was the last letter on file when Mr. Kilbourne called and the memorandum was made on that letter. There is no connection between the letter and the memorandum. I could only testify to these matters covered by this memorandum, from the memorandum itself. I had no knowledge at that time of the physical condition of the project.

Memorandum read as follows:

This is a memorandum made in pencil by my chief clerk, of an interview he had with Mr. Kilbourne in the latter part of April, 1911, and is supposed to cover the information given by Mr. Kilbourne, to be repeated to me. "Pumping plant paid for, 85 per cent work on ditch completed, machinery will be in in two or three weeks, Pacific Power & Light Company will furnish the power and build the necessary 15 miles of line to pumping site when they have evidence that we will sell the right of way for the canal. The construction of the power line will cost \$30,000. First unit expected to deliver 14,000 gallons per minute during greater part of irrigation season.



(Testimony of G. H. Plummer.)

4|-1911."

Q. Now, as I understand, that has no connection with the letter. Can you give us the probable date of the memorandum?

A. No, sir, only that it was in the latter part of April, which I conclude from my letter to Mr. Kilbourne, or rather, my letter to the Columbia River Orchards Company calling attention to Mr. Kilbourne's visit to my office which was dated April 29, 1911."

I would conclude that that memorandum made by the clerk covers the visit of Mr. Kilbourne, when I was absent towards the end of April, 1911. This refers to E. C. Kilbourne, not to C. A. Kilbourne. I do not remember that I had an interview with C. A. Kilbourne, but I do remember E. C. Kilbourne. As far as my file reveals and as far as my memory goes that was the end of the transaction with Mr. Kilbourne, relating to this matter. When I testified about the number of acres imbraced in this project I was testifying from a memorandum that I made of the history of the transaction.

The letter which I considered as an option was dated January 22, 1912. I wrote Mr. DeLarm of the Columbia River Water Company, confirming the arrangement made with him, A. Miller, and R. S. Chapman, at Seattle, on January 20, for the sale of 3400 below the constructed canal. The lands under the upper lift, the higher lands were eliminated from the

(Testimony of G. H. Plummer.)

proposition entirely when that final proposal of sale was made. The upper lands come into it at the time Mr. Chapman first came onto the scene, in October and November 1911, at which we discussed the sale of 8900 acres under the low and high lift, and at which time I offered to sell the lands at \$30.00 an acre upon condition that they would pay one-sixth of the total consideration in cash and the balance in five equal annual installments, and one of the conditions of that sale was that they were to agree to construct the pumping plant and canals to irrigate the upper lands within a limited time. I think that letter is in the file.

I don't know whether that was a letter or whether it was done verbally, but I had a conference with Chapman, DeLarm and Wright at DeLarm's office on November 9, 1911, at which the terms of the contract were discussed, and two days later I prepared a form of contract, which, however, was for the low lands only; did not include the upper lands because they had advised me that they were not willing to bind themselves to construct the canal and pumping plant to irrigate the higher lands, therefore I told them that we would under no circumstances sell the lands. Up to November, 1911, Chapman, Wright, or any of their associates had nothing that could be considered as an option for this body of land. The only time that we entered into any agreement or even encouraged them in the belief that they could

(Testimony of G. H. Plummer.)

buy those lands was in November 1911, after they had constructed the pumping plant and canal to irrigate seven or eight thousand acres on the low land, on the flat.

We never received any request in writing or by personal interview from anybody as to what right DeLarm or any of his companies had in the Northern Pacific lands, that I remember of.

I don't recall exactly the connection between the Columbia River Orchards Company and the Columbia River Water Company, but my impression is that we got the idea that the Columbia River Water Company was the successor of the Columbia River Orchards Company, and because the same people were handling it.

Q. What was this Priest Rapids scheme, a Carey Act scheme or a government project?

A. No, sir, it was first taken up as a private project by some people who thought they could construct a pumping plant for the irrigation of fifty to sixty thousand acres lying at varying lifts. The matter was first—it first reached a concrete form when we made an agreement with E. H. Libby of Lewiston, Idaho, for the sale of our lands provided he would construct the canal, and when Mr. Libby failed to finance it it was taken up by Mr. Pierce of the Columbia Valley Reclamation Company, the company that owned some water power rights between the head and foot of Priest Rapids which they figured on de-

(Testimony of G. H. Plummer.)

veloping, and in connection with that they were going to irrigate these lands.

I don't remember that this irrigation project was spoken of in the papers, as a matter of fact, we were keeping it quiet, but there was a good deal said about the water power scheme. That was also called the Priest Rapids scheme.

Q. Was it general information easily obtainable that you were selling these lands?

A. Yes, sir.

Q. Now, have you had a good deal to do in your connection as Western Land Agent with irrigation projects, pumping projects and others?

A. Why, some, yes: not the practical end of it, however.

Q. You were on this Wahluke project once, as I understood.

A. Yes, sir.

Q. And was that after the pumping plant was completed and the ditches and canals completed?

A. The pumping plant was partly completed and the ditches were probably 80 per cent completed.

Q. What would you say from your observations as to the character of the work, was it good?

A. The ditch construction looked good to me, but I didn't—I wasn't sufficiently well informed on machinery and pumping plant to say whether the pumping house and machinery that had been installed was sufficient for the work.

(Testimony of G. H. Plummer.)

Q. Did you get any report on it before you gave your options? The reason I am asking these questions, I want to explain to you, is I understood that your yielding your rule in the selling of land was conditioned that they would put in a good project and reclaim these lands. I don't know, of course, what your knowledge is, but I am inferring that either you yourself looked it over or had some report; that you wouldn't have given them these lands unless you thought they had a good project that they were carrying out, that is what I am asking.

A. Why that is partly true, but the situation as it was put up to us was this: Mr. Chapman stood ready to finance the whole project provided the Northern Pacific lands could be acquired, and he told me that before they would close their arrangements with the company for the acquisition of the pumping plant and canals, he would have the project carefully investigated, the canals and pumping system examined to make sure that it was sufficient and suitable for the irrigation of the land, and we relied on him to do that. In other words, we were perfectly willing to sell our lands under the conditions named provided the project was going to be thoroughly investigated, as we were assured it would be investigated, before the money would be put up.

Q. Who was Chapman?

A. R. S. Chapman came from Chicago with a let-



(Testimony of G. H. Plummer.)

ter from Mr. Cooper to me and it was our information that he was pretty well connected with big financial interests and would be able to finance it, which I think was true. He was connected with and has done a good deal of work for Byllesby & Company as an expert.

Mr. Chapman remained at Seattle, for a number of weeks thoroughly investigating conditions pertaining to the company, and finally concluded that he would not be able to put the scheme thru.

Whereupon the Court adjourned.

Court having adjourned until afternoon, the cross examination was continued.

The witness stated that he was unable to find the letter referred to in his previous testimony in regard to the contract for the sale of the land lying below the constructed canal, and testified I find the negotiations were with the parties verbally, and it finally resulted in the preparation of the contract of which I have a copy here, which, however, was not executed. That contract was prepared and submitted to them for approval. It embraces 3401.23 acres below the constructed canal. Our negotiations for the larger area did not reach the point of preparing a contract, because they were not willing to accept the conditions which I imposed on them for the construction of a canal to cover the upper lands. The negotiations for the larger area had just prior to the preparation of this contract. They were had in Oc-



(Testimony of G. H. Plummer.)

tober 1911, with DeLarm, Chapman, Wakefield, who I think was acting on behalf of Senator Clapp, and Mr. Wright, who was connected with the transaction. Mr. Wakefield, I think, was in the investment business in Seattle, and in this deal I think he represented Senator Clapp. The date of this contract, which was not executed is November 15, 1911. It was not executed because they desired that the sale be made in separate contract for each section, and also I think, as a condition they wanted the contract to run to either Mr. Wakefield or Sen. Clapp personally. I did not wish to do that, as I wanted if possible, to have them run to the company who owned the canal and the pumping plant that would serve the land with water.

The letter which I wrote to Mr. DeLarm, which might be considered possibly as an option is dated January 22, 1912, Submitted copy of that letter, which was introduced in evidence marked Defendant's Exhibit C. This is the only thing that could be considered in the nature of an option. They never had an option of the 9000 acres. We had, however, reached an agreement as to the sale of the 9000 acres, provided, they would comply with such conditions as we imposed, which they were not willing to do. That was the Chapman crowd, and was just preceeding this option given here, the month preceeding October 1911.

(Testimony of G. H. Plummer.)

Redirect Examination.

(By Mr. WILLIAMS.)

The contract that was drawn up and not executed was in the name of the Columbia River Water Company. I did have a talk with Mr. Wakefield, and that was one of the bones of contention, (referring to the large tracts), that he wanted us to sell the lands under contract, separate contract, for each separate section without any conditions and that the contract should run to him personally, and that I declined to do. My recollection is that Mr. Wakefield, was acting for Mr. Clapp, and that it would have been satisfactory to have made the contracts to either of them, but they didn't want to have the contracts run to the Columbia River Water Company. My remembrance is that they were to make some arrangement with the Water Company, whereby they were to have conveyed to them water rights for the lands that they were going to purchase from us so as to further secure them in the carrying out of the scheme for irrigating them.

Q. In answer to a question of Colonel Wood's this forenoon, you stated that Mr. Chapman thoroughly investigated the company; what company was that he thoroughly investigated?

A. The irrigation company. I understand that he looked pretty fully, as far as it was possible to do so, into the affairs of the Columbia River Water Company, and later he gathered all the facts in connec-

(Testimony of G. H. Plummer.)

tion with all of the companies that were interested in the project, there.

**[Testimony of J. H. Edwards, for the Plaintiffs.]**

J. H. EDWARDS, called as a witness for plaintiffs, testified under oath.

(Questions by Mr. BRYSON.)

I am connected with the Dexter Horton Trust & Savings Bank of Seattle. Dexter Horton Trust & Savings Bank, changed its name from Washington Trust & Savings Bank, last September. I am vice president and trust officer and became such the first of February 1911. The Washington Trust Company of Seattle, was amalgamated with Dexter, Horton Bankers in August, 1910, at which time Dexter Horton Company was nationalized and became the Dexter Horton National Bank of Seattle, and the Washington Trust Company became the Washington & Savings Bank, the National Bank taking over the commercial business of both institutions, the Trust Company taking over the savings department, trust business, escrows and miscellaneous.

I was acquainted with W. E. DeLarm. Met him early in 1910 at the time of my connection with the Washington Trust & Savings Bank. There was a trust there with the Columbia River Orchard Company. It was trustee for a bond issue, the securities were mortgages, five mortgages as I recall. The trust was regulated and controlled by a trust agreement

(Testimony of J. H. Edwards.)

between the Columbia River Orchard Company, and the Washington Trust Company, of Seattle. Certified copy of this trust agreement introduced in evidence marked plaintiff's Exhibit 5, under objection as irrelevant and immaterial.

Certified copies of the following documents were introduced in evidence over the objection that they were irrelevant and immaterial and marked plaintiff's exhibits as follows:

Certified copy of trust agreement of May 21, 1910. Plaintiff's Exhibit 5.

Certified copy of Desert Land Mortgage from Virgil H. Robinson and wife, to the Columbia River Orchards Company, and the assignment to Columbia River Orchard Company, and assignment to the Washington Trust Company, Plaintiff's Exhibit, 6-a, 6-b and 6-c.

Certified copy of Desert Land Mortgage from Emil F. Cords to The Columbia River Orchards Company, Plaintiff's Exhibit 7.

Certified copy of water right contract, between Frederick C. Koppen and The Columbia River Orchard Company, and assignment of the same, Plaintiff's Exhibits 8-a and 8-b.

Certified copy of desert land mortgage from Alfred Gagner and wife, to The Columbia River Orchard Company, Plaintiff's Exhibit 9.

Certified copy of desert land mortgage Laura Wattle and husband to The Columbia River Orchards

(Testimony of J. H. Edwards.)

Company, and assignment to The Columbia River Orchard Company, and assignment to Washington Trust Company, plaintiffs' Exhibits 10-a, 10-b and 10-c.

The Trust Company resigned shortly following my connection with the company and I took a receipt from the succeeding trustee. I have the receipt and it contains a true and correct description of the securities that were held by the Washington Trust Company, although, I think in one instance there was a clerical error in the description of a portion of the land that was discovered afterwards. In the Gagner mortgage it says, "covering the SE $\frac{1}{4}$ " and should have been the SW $\frac{1}{4}$ . Receipt offered in evidence marked Plaintiffs Exhibit 11. The date of the receipt is March 28th, 1911. Three affidavits made by Mr. DeLarm, were produced, which being identified by the witness as documents referred to in the receipt were introduced in evidence, under objections, marked plaintiffs Exhibits 12-a, 12-b and 12-c.

I had some correspondence with reference to our resignation. I have the original letter dated February 3, 1911 written to our company signed by the Columbia River Orchard Company, by W. E. DeLarm, President, and attest, A. J. Biehl, Secretary. Letter identified and introduced in evidence, marked plaintiffs exhibit 13.

Witness identified letter from J. H. Edwards, vice president to the Columbia River Orchard Company,



(Testimony of J. H. Edwards.)

dated February 7, introduced in evidence over same objection, marked plaintiffs exhibit 14.

Another letter same date, produced and identified, introduced in evidence over same objection, marked plaintiffs exhibit 15.

Certified copy of the notice of resignation of the Washington Trust Company dated 31st day of January 1911, was introduced in evidence over same objection, marked Plaintiffs Exhibit 16.

Witness identified the original assignment March 16, 1911, from Washington Trust Company of Seattle, to the Oregon and Washington Trust Company. introduced in evidence over the same objection, marked plaintiffs exhibit 17.

The receipt is the one held by my company. There were \$59000 in bonds and outstanding at the time, none of which had been returned to the company for cancellation. I do not recall any abstract of title, accompanying these mortgages or opinion of any attorney upon the title or anything of that kind. I don't think there were any, they would have been referred to in the receipt if there had been. Our company made no guarantee of these bonds.

I met DeLarm sometime previous to the time when my connection with this company began. At the time I was vice president and manager of the Seattle Trust & Title Company. About February 1910, DeLarm Called, Biehl called once then he brought DeLarm afterwards. We had two or three confer-



(Testimony of J. H. Edwards.)

ences. He wished us to underwrite a proposed bond issue on their project over on the Columbia River. He explained the project but we made no investigation of the matter in detail, of the project. I outlined what we would require. We told them that if we did so they would have to furnish us a detailed statement of the amount of cash they had, already invested and engineer's report, which if it was not by an engineer whom we would approve we would have it checked over by our own engineer at their expense; that I, or one of the other officers would want to go over and inspect the proposition in general as well, abstracts would have to be furnished and same approved by our own attorney regardless of any opinion we might have. All these, of course at their expense. If that was satisfactory, we would then *consider* possibly the proposition with them for underwriting. They were in several *times* talking it over and meantime I investigated them as to where they were from, their affiliations etc., and we decided that we would not undertake it. I did not notify them of our decision because they never came back to a definite proposition. I had a conversation about that time with E. C. Kilbourne.

After I had had one or two conferences with them, Dr. Kilbourne *dropped* in to see me, and simply expressed himself that he was glad to know that the Trust Company and the city was inclined to take hold of good industrial enterprises, things which

(Testimony of J. H. Edwards.)

would help in the development of the country; and I gathered that he might have some association with the *the* company, as to installing that project. I told him, as I recall it—of course, it is indefinite recollection now—that we were considering it; had talked the matter over with them; that we would be interested, of course, in a good legitimate enterprise, providing we were satisfied that the parties behind them were, with the assistance that we would decide to give them, capable of putting it through successfully, both financially, and as to their ability, executive ability, etc.

Q. When Mr. Kilbourne came to see you, did he know of the efforts they were making to get your company?

A. I don't know, I am sure; I suppose he did, or he wouldn't have dropped in.

Q. Who brought the subject up? You or he?

A. He—as to the particular company, you mean?

Q. Yes.

A. I don't recall as to that which one spoke of it first, but we both understood, after we had talked a little while. I think, that it was in connection with that project, that we were chatting.

The investigation I made was the previous connection of DeLarm and Biehl. They were formerly in Everett, Washington, or DeLarm, was with some Veneering Company, that he had attempted to finance there. After investigation I decided that they had

(Testimony of J. H. Edwards.)

no money, it was too much of a promotion scheme, that they had no financial backing and we did not care to put up the money for somebody else to work on.

Cross Examination.

(By Mr. WOOD.)

Dexter Horton Trust & Savings Company was a consolidation of Dexter Horton Company, the old bank, with the Washington Trust Company of Seattle. The Dexter Horton nationalized and took over the commercial end of both institutions, the Washington Trust Company, took over the savings and trusts and escrow and miscellaneous of both institutions. The Dexter Horton Trust & Savings Company, does the saving and trust business for the Dexter Horton National. Their correspondent in this city are Ladd & Tilton, and I believe the Dexter Horton bank has the same standing in Seattle, that Ladd & Tilton, has here. The integrity and financial ability of the Washington Trust & Savings, the one that was amalgamated was good, I never heard anything to the contrary, they had a very good standing. Some of the strongest people of the city were connected with it. Mr. J. W. Clise, was president and is now chairman of our board. Mr. C. J. Smith, was vice president, he used to be here in the old Oregon Railway and Navigation Company. A. S. Kerry is vice president and J. M. Frink, president Washington Iron Works was a directors. They were men of

(Testimony of J. H. Edwards.)

standing, leading men of the city, they had some three and a half million at the time of the amalgamation.

The underwriting was with another institution with which I was connected. That was a different institution, they came to us as I say about February, It was the Seattle Trust and Title Company, that was prior to the Washington Trust Company acting as trustee to the bond issue some three months prior. I never was connected with the Washington Trust Company, under the old name. The name was changed to Washington Trust & Savings Bank when I went with them.

Q. And the Seattle Trust Company, declined to further consider any question of underwriting, because you found on investigation, that DeLarm and Biehl had no financial ability?

A. I said that we decided, our committee, that we would not act even if they wished us to, but they never came to the point so that that— — —

Q. Wished you to?

A. They never came to the point of saying that they would put up money enough for us to make the investigation, so I don't think we ever told them of our decision, because they never came to us.

Q. I was trying to get at the reason for your decision, Because you found them to be men without financial standing, without financial ability?

(Testimony of J. H. Edwards.)

A. Yes, and they had not been successful in enterprises they had handled.

Q. Now, the bonds with the Washington Trust Company, how many bonds were issued under that trust?

A. \$59,000.

Q. And what was the total allowable issue?

A. I will have to refer to that trust deed which I have here

Q. Was it \$300,000?

A. I was just looking to see. I had it in my mind there was no limit, as long as they put up securities \$125. for each \$100. I don't see there is any limit in here. It is so long since I have read this.

Q. I had the impression that the first issue was limited to \$300,000.

A. (Reading.) "Amount of bonds which may be issued in any series under this trust agreement shall be limited only by the amount of collateral deposited with the trustee, to the amount of 125 per cent for every \$100. of bonds issued hereunder."

Q. Then as I understand it, the conditions were that, provided they put up \$125, in securities, against \$100, par value of bond the securities to be subject to your consideration and approval, you would permit the bonds to be issued, or would issue them?

A. Yes, Not approval, of course, as long as they put up the security.

Q. Weren't those securities in any way subject

(Testimony of J. H. Edwards.)

to your consideration? Who was to say that they were \$125. in value. Was it to be just the face?

A. The president of the Columbia River Orchard Company. That is what those three certificates were for.

Q. You had no responsibility, then, in passing upon the value of the securities?

A. No, sir.

Q. This issue of \$59,000., while it was in your hands, did you know anything about the sale of these bonds?

A. No, sir.

Q. I don't mean as an officer of the bank, or as a citizen of Seattle, or in any way, do you happen to know whether they sold at par?

A. No sir, I do not.

Q. Do you know anything about their reputation?

A. No.

Q. Whether they were considered good?

A. At that time, you mean?

Q. Yes.

A. No, at the time of sale. I didn't hear anything about it, in fact, I didn't know that the bond issue had been made until I went with the institution in January, 1911, when I was looking over the trust files to see what was there, I discovered it. That was the first I knew any bonds were ever put out by the company.



(Testimony of J. H. Edwards.)

Q. Well, after that day, and before you transferred it over to the Oregon corporation, did you have any knowledge as to the market value of the bonds?

A. No, sir. I knew—I was satisfied there was no market for them, because a good many people came in and asked us about it, asked me as trust officer, and I told them we knew nothing; that I could find nothing in the files showing that any investigation had ever been made by anybody connected with the Trust Company

Q. That was the Washington Trust & Savings?

A. Yes, sir.

Q. That had the mortgage?

A. Yes, sir.

Q. At what time was it that you had the conversation with Mr. Kilbourne?

A. That was early in February, I think; February or March, somewhere along there, of 1910. That was before this bond issue was put out, when DeLarm and Biehl were first talking with me, and I was representing the other trust company, Seattle Trust & Title Company.

Q. You knew Mr. Kilbourne, did you, at that time?

A. Yes, sir.

Q. Was he a resident of Seattle?

A. Yes, sir.

Q. Did you know the other Kilbourne—C. A.?

(Testimony of J. H. Edwards.)

A. Not at that time. I have met him since.

Q. You have known him since?

A. Yes, sir.

Q. Did you know the business they were in at that time?

A. I knew the firm of Kilbourne-Clarke.

Q. Engineers?

A. Yes, sir.

Q. Now in this conversation that you had with Mr. Kilbourne was that an interview sought on either side, or just accidental and casual?

A. I don't think—it wasn't sought. Mr. Kilbourne used to come into our office quite frequently. We had an abstract of title business connected with it. We used to see him in the office quite frequently. One time when he was in, he dropped in and commenced to chat about it, not in particular about this company to begin with; it was more that he was asking what our plan was, of business; and I explained it to him, and he said he was glad to see that we were willing to undertake to underwriting any legitimate enterprise, etc. This was spoken of, as I testified before; I don't recall which one brought it up first.

Q. This was spoken of as a mere incident in a general conversation?

A. Yes, sir, I took it that he wanted to know if we were going to underwrite it, and we discussed

(Testimony of J. H. Edwards.)

that. I told him we hadn't arrived at a decision yet.

Q. By underwriting, you mean in a sense guaranteeing the bonds and helping finance it, and looking after the management?

A. No, not guaranteeing; buying the bonds, underwriting the loan.

Q. I want to know what you intended by it, that you would buy the bonds and resell them?

A. Resell them or carry them, whichever we—of course, we buy with the view of reselling them.

Q. In buying them would you have any condition that you should have any voice in the management of the business?

A. I most certainly would, unless I knew the people pretty well. Would want to watch the disbursement of the money, which is ordinarily done by the trust company underwriting.

MR. WOOD: I would like to make Mr. Edwards for convenience, our own witness for a question.

Q. I will ask you if you knew the general reputation in Seattle, for integrity, of this Mr. E. C. Kilbourne, you were talking to?

A. Good, as far as I know.

Q. You knew at this date, now, the general reputation for integrity of the other Mr. Kilbourne, Mr. C. A. Kilbourne?

A. Good, as far as I know.

Q. And your position in the bank would enable

(Testimony of J. H. Edwards.)

you to know if there was any doubt on that, wouldn't it?

A. Well, Mr. C. A. Kilbourne does business with the bank and stands well. Mr. E. C., I don't think does business with the bank. I just know of him in a general way.

Q. I don't mean the personal business with it; I mean your business as a banking officer, would lead you to know if they were considered shady men?

A. Yes, yes, would have my opinion.

Redirect Examination.

(Questions by Mr. BRYSON.)

The Washington Trust & Savings Bank, had no connection with the bond issue of 1911, this was May 1910, at the time of talking with Mr. Kilbourne, Mr. Kilbourne, happened to drop in. I may have written the letters in regard to DeLarm and Biehl, but I hadn't received the answers for I know at the time I was talking with him we had not. That was the only conversation I recall having with Mr. Kilbourne about it.

**[Testimony of R. J. Brazell, for the Plaintiffs.]**

R. J. BRAZELL, called on behalf of plaintiffs testified under oath.

I reside in Portland, Oregon, three years, occupation lawyer; age twenty-four years, have been practicing for three years.

(Testimony of R. J. Brazell.)

I knew Mr. George C. Hodges, don't know where he is now. I got a card from him in November 1912. just a post card. He was at Victoria, British Columbia. I had one share in the Washington and Oregon Trust Company, and was secretary. I first met Hodges in Tacoma, about four years ago I think. I met him in Tacoma, at christmas 1910, and he asked me to go over to Seattle, to meet a couple of men who were thinking about going into business in Portland, and I went over on the boat with him one morning, and he introduced me to Mr. DeLarm and Mr. Biehl. I think I was there about ten minutes, and they told me they were thinking about forming a bank or trust company in Portland. They asked me to write to them what the banking laws of Oregon was. I wrote them after I came back letter of December 20th, 1910, handed to witness. This is the one that was in response to their request for me to write.

The letter introduced in evidence over objection as irrelevant, and immaterial, marked Plaintiff's Exhibit 18.

Minute book of the Oregon and Washington Trust Company handed to the witness. Witness testified that he kept the book as secretary of the company, while he was in it. Witness examined the minutes under the heading of January 25, 1911, testified that they were the first minutes, and examined page 2 and identified it as the subscription to the capital

(Testimony of R. J. Brazell.)

stock of the corporation, and testified that the subscribers subscribed their respective names and the signatures were theirs. Identified page 4, as the original minutes of the stockholders meeting and pages 5 to 12 as the minutes of the corporation, and page 13 and the succeeding pages as the minutes of the board of directors, the minutes of the first meeting, the subscription to the capital stock, the minutes of the first meeting of the stockholders and the minutes of the first meeting of the board of directors were introduced in evidence, over objection as irrelevant and immaterial, and marked Plaintiff's Exhibits 19, 20, 21, and 22.

Q. Mr. Brazell, I will ask you if you received the securities that were held by the Oregon and Washington Trust Company, that were mentioned in the bonds of the Columbia River Orchard Company.

A. I did not receive them, except that I received the key to them.

Q. Who held these securities?

A. Why, Hodges held them, and when he went away, I think in August 1911, there was nobody in town, nobody belonging to the company, to give the key to, so he left it with me and said when the company elected a trust officer, for me to turn the key over to whomsoever would be elected, so I simply held the key; I never saw the securities, and never went near them.



(Testimony of R. J. Brazell.)

Q. Who did take possession of them afterwards.

A. Biehl.

Q. Did Mr. Biehl give you a receipt for them?

A. Yes, at the time Mr. Hodges gave me the vault, he had a list of all these securities and papers, and he had a duplicate, and he handed it to me down at the train. He said those things were all complete, and asked me to receipt for them; so I simply took his word and receipted for them, but I had never seen them at all.

Q. And you turned the key over to Mr. Biehl?

A. Yes, sir, after he had been elected trust officer. And at that time I turned them over, I checked them off to see if they were all there, and they were, just as the list was written.

Q. With whom did you check them over?

A. Biehl.

Q. What did you check them over from?

A. Well, he gave me a duplicate.

Q. Did he have the book there with the list of the securities in it?

A. I don't recall that he did.

Q. What is that?

A. I don't recall that he did. I don't think that I saw any.

Q. What was it you checked them over with then?

COURT: The list. When Hodges went away, he gave Mr. Brazell a list.

(Testimony of R. J. Brazell.)

A. A list and duplicate of it. He took the original and left me the duplicate copy, so that I could use that to check with the next man.

COURT: You used that list to check with Biehl?

A. But I never checked with Hodges at all. I took his word for it.

Q. You just checked it over with Hodges' receipt?

A. Yes, with his duplicate receipt. There was about four or five pages.

MR. WOOD: Never checked it over with Hodges?

A. No.

COURT: When Hodges went away, he gave Mr. Brazell what purported to be a list of the securities, and Brazell receipted for them, and gave him a duplicate at the same time. and when Brazell turned them over to Biehl, he checked with that receipt.

Q. Did you ever see that book?

A. I don't think I ever did. The receipt that Mr. Biehl gave me was turned over to the Government at the time of the Biehl trial. I identified it at the time of the Biehl trial.

Witness was handed letter dated May 15, 1911, addressed to F. C. Koppen, signed by witness, as secretary. The witness continued and testified that I signed the letter at Hodges' instance. I did not write the letter at all. I didn't dictate it or write it. Hodges wrote it and merely asked me to sign

(Testimony of R. J. Brazell.)

it said he wanted it signed by the secretary. I knew nothing of the contents, or whether it was true or not, but I presumed that it was. I had confidence in Hodges. He had my fullest and complete confidence. If there was anything wrong with it, I didn't know it. If I had, I certainly never would have allowed my name to be used with it.

Letter introduced in evidence over objection as irrelevant and immaterial, and marked Plaintiff's Exhibit 23.

The Oregon Trust Company had no attorney except Humphrey. Hodges used to asked me to do something for him once in a while. Mr. Humphrey was a member of the company, of all the companies. He was an attorney and he did all the work done here. I never was attorney for the company, except that Hodges consulted me once in awhile. He asked me to notary some papers. I don't know whether the Oregon and Washington Trust Company held any abstracts of any kind, the property belonging to the Columbia River Orchard Company or the Washington, Orchard Irrigation and Fruit Company. I never heard of any, none of the papers ever came into my hands, except the minute book. They never had any meeting after the first meeting in January, except what shows there except the resignation of directors and election of new ones. No other business was ever transacted by the corporation after that time. I never heard of any other

(Testimony of R. J. Brazell.)

transaction that the Trust Company had except these matters of the Columbia River Orchard Company. I paid nothing for the one share of stock I held. Simply transferred to me to enable me to become secretary. It was handed back to them. I had no financial interest in it, never a cent.

Cross Examination.

(By Mr. WOOD.)

Mr. Brazell, I notice a deed has been introduced here in evidence, by which certain lands were transferred from the plaintiff Tobey to Mr. Kilbourne, to which you affixed the notarial certificate as notary, and under the testimony, if I remember correctly, that deed was prepared and drawn up in Hodges' office? Did you and Hodges have offices together?

A. No, we did not. That deed was drawn up in my office over in the Commercial Building, and it was not acknowledged that day, but afterwards Hodges had it, and he called me up over the phone and asked me to come over and take Tobey's acknowledgment. I went over to the office, and took the acknowledgment and went right away.

Redirect Examination.

(By Mr. WILLIAMS.)

The acknowledgement was taken the day it appears. It certainly was. I couldn't say how long the deeds were drawn before the acknowledgement was taken, must have been a day or two, wasn't that same day, because I remember that Tobey, and also

(Testimony of R. J. Brazell.)

Kilbourne were over to my office in the Commercial building helping to draw up these deeds. There was an awful bunch of abstracts they had to go over to consolidate all this property so as to make it in one or two instruments. I don't know how many there were, but it was an awful big bunch of abstracts, and he wanted to consolidate it in to one deed.

Q. Did Mr. Kilbourne say that?

A. Yes, the gentleman, the first gentleman here.

Q. Edward C. Kilbourne?

A. Yes, sir.

It was a day or two after that before the acknowledgment I would believe.

Q. Who told you to prepare the deed in the name of Kilbourne?

A. I don't know who told me that, either Hodges or Tobey I don't know which. I know Mr. Tobey is the one that paid me for drawing the deed.

Recross Examination.

Q. Do you know whether or not the name of the grantee was written in the deed at all, or a blank left?

A. I couldn't say as to that, but if it is type-written in the same kind of type it was written at that time.

Q. We haven't got the original here. I was just wondering whether you remember or not.

A. Well, I think Mr. Kilbourne's name was writ-

(Testimony of R. J. Brazell.)

ten in, because he was over at the office at the time, and they told me it was being transferred to him.

Q. With Mr. Tobey?

A. Yes, sir.

Q. Which of the Kilbournes?

A. I don't know which one. I had never seen them before and have never seen them since.

Q. Well, who told you the deed was to run in the name of *Kilbourn*?

A. I don't know; either Hodges or Kilbourne or Tobey. There was three of them there together. I don't know which.

Q. Are you sure Tobey was along?

A. Well, I know one of the Tobey's was over in the office, yes.

Q. At this time?

A. Yes, I don't know which Tobey it was, yet I know he was there.

Redirect Examination.

Q. You may state whether or not any money passed through your hands?

A. What money?

Q. In payment of the stock of the Oregon and Washington Trust Company?

A. Why, I wasn't treasurer.

MR. FLEGLER: There was no objection on the part of either one of the Tobey's to having the deed made out to Mr. Kilbourne?



(Testimony of R. J. Brazell.)

A. I never heard of any. They paid me for drawing them.

[Testimony of C. J. Steeples, for the Plaintiffs.]

C. J. STEEPLES, being sworn as a witness for plaintiffs, testified as follows:—

I reside at Seattle, have resided there fourteen years, my occupation is a stock broker. Have been in that business about 12 years. My age is 60. My office is located at 102 First Avenue South, right under the Northern Pacific ticket office on a prominent business street. The office is in the basement, practically the ground floor a few steps down from the street. We buy and sell securities and bonds and handle them on commission.

I had acquaintance during 1911 with the Columbia River Orchard bonds. Knew what their market value was from time to time during the year 1911. During February 1911, I have no record, but during March I would say they were in the neighborhood of 40c on the dollar, in April the first sale that I made was April 4th, I sold \$2000 worth par value of these bonds at 19c on the dollar, these were February bonds. During the remainder of the year they kept *dropping* from that time on. If I can just refresh my memory from a little memorandum I have here, May 11th was the next deal I made. I sold \$6000 worth of these bonds at a basis of 10c on a dollar, May 13th, \$2000 on the same *basis*, May

(Testimony of C. J. Steeples.)

16, \$4000 on the same basis; May 19, \$3500 *bais* of 9c; on the *said of* May 27 \$1500 on a basis of 9c on the dollar and from that time they were still falling on the market. They dropped during the year round two or three cents on the dollar.

From March 1st., my first recollection of them was on the basis—at least they were being offered on the basis of 40c, but my recollection is that they were gradually *dropping* down until April, but just what the gradation, is I don't know as did not handle any during that month, but it was somewhere between 40 and 20c on a gradual sliding scale. The bonds were generally known there in the market. I am a member of the Seattle Stock Exchange. The Stock Exchange never listed the Columbia River Orchard bonds. Its purpose is to facilitate the buying and selling of stock and other securities in the open market. It is the meeting place for the brokers for the transaction of business. We never investigated the standing of the Columbia River Orchard Company. The stock Exchange as a rule investigated and passed upon the bonds that they listed. When a security is listed on the Exchange it is always investigated by a committee and securities committee. The Columbia River Orchard bonds were not discussed formally, they were discussed informally among the members. They were never offered to the Exchange for listing. I do not know DeLarm. I know Biehl. None of the officers of the Columbia River Orchard Com-

(Testimony of C. J. Steeples.)

pany ever offered these bonds to be listed with the Exchange. The bonds were offered for 40c, but I don't know of any sales made at that price. That was simply an offer without a sale. I do not know where the bonds came from as a matter of fact.

The general character of the trading in these bonds generally for, they were bought and handled for trading purposes. That is as I understand it, to trade in for real estate and for equities and things of that kind. They were not so much bought for investment as for trading purposes. That was my understanding of it. I don't know of anybody that did keep them for investment or bought them for investment.

Cross Examination.

(By Mr. WOOD.)

The first personal deal that I had with these bonds was in the month of April, on the 4th day of April, was the first sale I made in these bonds. That was at 19c. I made sales in May on the basis of 9c. This particular block of bonds sold on the 4th day of April, I got from a man by the name of Stevens, John Stevens in Seattle. He was what I called a curb stone broker, not a member of the exchange. I don't know that he had any connection with DeLarm or the company. The same man I bought these from, I sold at 19c, offered the bonds at 40c on the first day of March, according to my record. That was \$1100 par value, the ones that I sold at 19c was not the same

(Testimony of C. J. Steeples.)

block, first was \$1100 worth and this latter block was \$2000. Prior to those offered at 40c early in March I had no knowledge of the bonds at all. This value of the bonds I should say it would be a matter of common knowledge among the brokers at that time, on March 1st, around that time. It would hardly come to me alone in the business you know. Any person interested in the purchase or sale of these bonds I don't think would find any difficulty in ascertaining their value by inquiring in Seattle.

**[Testimony of F. C. Koppen, for the Plaintiffs.]**

F. C. KOPPEN, called as a witness on behalf of the plaintiffs, being duly sworn testified as follows:

(Questions by Mr. WILLIAMS.)

I reside at Wahluke, Washington, have resided there about 13 years, my occupation, I do a little fruit raising, and store business and run a post office. I did some work there in locating settlers in the vicinity of Wahluke, not a great deal. It stretched over quite a period of time, about three years I think.

I am familiar with the lands that come within the irrigation scheme originally promoted by the Columbia River Orchard Company. I was not in the company itself, but was familiar with their project.

Witness was shown defendants Exhibit A, and stated it is a fair representation of the land lying

(Testimony of F. C. Koppen.)

within the Wahluke project promoted by the Columbia River Orchard Company.

The ridge represented, running from the Columbia River, round the town of Wahluke and back from the Columbia River is in the neighborhood of 300 feet, almost straight up and down. The character of the ground lying between that ridge and the Columbia River is quite level. There are no ravines running thru it and no draws, I would not call them draws, nothing you could call that. The white line running from the river just below Section 34, of Township 14 North 25 East running up around the Township 26 east represents the ditch that they built there and the white line striking off thru section 20 is another, that is another fork of the ditch. It slopes toward the ridge north and west from the ditch it doesn't all slope towards the north. The highest ground is about here, (indicating) from there it slopes from this ditch and the river then along here, (indicating) it slopes from the ditch.

The square down here in Section 3 in Township 13 North and 25 east represents the pumping station. The high land above the pumping station is a little over 80 feet from the river level, pumping the water up from the river level to the ditch it has to be raised about 80 feet. The rise and fall of the river at various times of the year is about 20 feet. Now in order to water the lands to the north and west of the ditch, a new ditch would have to be dug. They



(Testimony of F. C. Koppen.)

have had several schemes I think the last they decided on was to put in another station here, indicating, and put out of this ditch *and put out of this ditch* about the middle line of Section 20 on a slight high ground here and run both ways from there in all directions. I have heard the engineers say that it would require an additional lift of 30 feet if they took it here in Section 34 that would cover a tract of land in here. The land above the ridge, the first of it could probably be reached by 200 feet in here, and for this (indicating) would be from 300 to 600 feet very little as low as 200 feet.

The Columbia River Orchard Company, or the Washington Oregon Irrigation and Fruit Company had within the Wahluke project at one time 80 acres in Section 10, but they sold part of that to different people, and I don't know what part they had at any particular time, and they had a contract on Section 20 and half of Section 16, and east half of Section 16. Then a little later on they purchased some more in Sections 10 and 3, little fractions along here next to the river. They got them from me, there was between 39 and 40 acres I suppose in those three fractions. They had half of Section 10. They had about 315 acres. They did not have that until later on in the year 1911. I have the date of that purchase. The character of the ownership of Section 16, was a contract from the State of Washington. I heard DeLarm & Biehl and all connected



(Testimony of F. C. Koppen.)

with the company say so. That is all the knowledge that I have of the ownership of these lands. DeLarm told me that they had a contract for Section 20, from Maltbie and Friel, and I think some others interested in them, Davis. He told me they paid \$100, paying \$64000 for the section. Mr. DeLarm, told me one time that they had an interest in Section 36.

Question by Mr. Wood: Are you a civil engineer?

A. No, sir.

Mr. Wood, interposed an objection to his testimony about the engineering feature of the scheme, and his testimony as to the ownership of the land, and moved to strike it out as incompetent, irrelevant and immaterial.

COURT: I suppose he can testify as to what DeLarm and Biehl said, as that is one of the important features in this case to show what fraud in the issue of these bonds.

Witness continued, I have located a number of the corners of the sections within the Wahluke project to show people where the lands were that they intended to file on. I found a number of the, there aren't many left.

DeLarm said in regard to Section 36, that he had had trouble with the owner of the land and couldn't very well buy it directly from them, so he gave it to a friend of his.

Mr. Wood interposed the same objection.

(Testimony of F. C. Koppen.)

And gave a friend of his \$3,000 to go and make the first payment on that and hold it in his name or his friend's name until he got ready to pay the rest and have it turned over to himself.

The town of Wahluke, is all above Section 10. They got yhe land upon which the town of Wahluke is situated from Mrs. Koppen, my wife. The east half of Section 16 and all of Section 20 is sub-divided into lots 5 acre tracts. I heard from the purchaser and the company, the officers of the company, that they were sub-divided into 5 acre tracts in order to make the parcel small enough that people could afford to buy. These were the lands upon which they were giving contracts. Section 10 was laid out the same way. It wasn't at first. It was laid out in squares, 10 acre tract, different from what the plat shows here.

Mary A. Domay, s my mother-in-law, my wife's mother. She had 160 acres in the Wahluke project in Section 10-14-26. At one time she appointed me as her attorney-in-fact, for a short time, but generally Mrs. Koppen, did her business for her. As her attorney-in-fact, I gave the Columbia River Orchard Company a water mortgage covering her land. That was the other land, *thoug*, besides this 160 acres. She had 40 acres that she held under the Desert Land Law. It is in Section 10. I don't believe I could give a description, unless I should mark it out, the whole section on a piece of paper.

(Testimony of F. C. Koppen.)

Mortgage was shown witness. I didn't do the writing in that. The mortgage covers the 40 acres given by her. I am pretty sure it does. The description of the 40 acres given in the mortgage is SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 10, Tp. 14, N. Range 26 E. W. M., and then there is an addition. This covers more than the 40 acres. The additional is the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  and the E $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 10 same township and range. I didn't sign that mortgage with that last part added. That is my signature at the bottom of the mortgage. At the time I signed it I signed a note for \$4000. The date of it is April 1st, 1912, and is due 1912. It was dated June 12, 1910, due April 1st, 1912. I know nothing about the note attached to the paper for \$16000 unsigned. When the mortgage was given it covered 40 acres.

COURT: Is that one of the mortgages claimed to have been deposited for security on these bonds?

MR. WILLIAMS: Yes, we expect to connect that up later.

COURT: At the time the transaction was had with the Tobeyes.

MR. WILLIAMS: Yes.

The first I know of the additional 160 acres *insert* in the mortgage was at the trial of the Columbia River Orchards Company here about five months ago.

COURT: What do you mean, the Biehl case?

(Testimony of F. C. Koppen.)

A. The Biehl case, yes.

COURT: Heard in this court?

A. Yes, sir.

Mortgage was introduced in evidence, marked "Plaintiffs' Exhibit 24," over the objection of Mr. Wood, that it is irrelevant, and immaterial.

Question by the Court: Well, how much of the land could be irrigated north of the ditch?

A. None at all.

Q. None north and west?

A. No, all between the ditch and the river.

COURT: All the lands that can be irrigated by the ditch are between the ditch and the river.

Court adjourned until 2 P. M.

May 14, 1913, 2 P. M.

A certified copy of the trust agreement between the Columbia River Orchard Company, and the Oregon and Washington Trust Company, from the records of Grant County, Washington, was introduced in evidence, over objection to it, as irrelevant and immaterial, marked "Plaintiff's Exhibit 25".

A certified copy of agreement entered into between the Columbia River Orchard Company and the Oregon and Washington Trust Company, containing in fact, the trust agreement between the Columbia River Orchard Company, and the Washington Trust Company, dated January 31, 1911, was admitted in evidence over the same objection, marked "Plaintiff's Exhibit 26".

[Testimony of Oscar G. Heaton, for the  
Plaintiffs.]

OSCAR G. HEATON, a witness called on behalf of plaintiffs, being first duly sworn testified as follows:

(Questions by Mr. WILLIAMS.)

I reside in Seattle, Washington, have resided in Seattle, about seven years, occupation, attorney at law. Have been practicing law since 1894 Have been practicing in Seattle, since, I went there. My age is 42. I was acquainted with W. E. DeLarm and A. J. Biehl, E. C. Kilbourne and C. A. Kilbourne. Have known DeLarm and Biehl, since sometime the latter part of 1910. I have known Dr. Kilbourne, by sight for some years, but I was in Californis 10 years, and I didn't see him of course during that time. I knew him by sight before that, but have known him since. I had something to do with the Columbia River Orchard bonds during the first four months of the year 1911.

I was familiar with the status of the value of these bonds in the market, and have heard they were being traded. I think there were few, if any sales for cash, They sold for possibly two bits, not over that. I knew something about them in the month of March 19. I think the same answer would apply to the sale of the bonds at that date. After that during the year 1911, they sold for 10c and down as low as 3c In the latter part of 1911, they were brought out thru brokers *a* peddled around all over town.



(Testimony of Oscar G. Heaton.)

There were innumerable trades being made. They were being offered very freely by brokers for almost any consideration, principally in trade.

At different times I saw the bonds. I know the office of the Mullen Land Company, on Third Avenue. They handled them, they handled a great many of them. They displayed at one time a large number of bonds in their window which was facing the public street, that was during the summer of 1911.

I know of the Columbia River Orchard Company, my first dealings with them were along about the first of April. I looked up their general financial repute. The investigations covered the previous two or three months. They had no credit. At one time they were about to be ejected for non-payment of office rent, that was I think the months of December, January and February, that was about the first of April 1911. I think the rent covered those months.

I brought several actions against them for different clients. I brought one action for Mr. Hawkinson, who afterwards transferred the bonds to me. I intervened in the case of Taylor v. The Columbia River Orchards Company. There were pending at that time two or three actions against them, in one of which judgment had been entered and return of nulla bona made by the sheriff. There were two suits in 1910, two or three and four or five at the beginning of 1911.

We have a publication there, known as the Seattle



(Testimony of Oscar G. Heaton.)

Daily Bulletin, it is the official city paper, and also publishes all the court records of the various courts, and all of the auditor's records and every proceeding is shown in this paper, every order that was made and the commencement of every original action and every judgment. I know of my own knowledge that these various suits against the Columbia River Orchard Company were published in this bulletin.

A receiver was appointed in the case of J. D. Taylor vs. The Columbia River Orchard Company; that appointment was made in March, sometime, 1911.

A certified copy of the record in that suit was introduced in evidence over objection as to being irrelevant and immaterial, marked Plaintiff's Exhibit 27.

I brought one action against them myself. That was on six of the 1910 issue, which bore 8 per cent, the interest payable semi annually. The interest was delinquent more than ninety days, and I elected to declare the whole amount due, and sued them for the whole amount face and interest of the bonds. The suit was settled about seven days after it was commenced. I was the attorney for Mr. Steeley, in the case of Steeley vs. Columbia River Orchard Company. That was some kind of an action brought, I think, on the 12th day of May. The interest became delinquent on the 1st of May, 1911.

(Testimony of Oscar G. Heaton.)

Certified copy of the case of William Steeley vs. Columbia River Orchards Company, introduced in evidence over the same objection, marked Plaintiff's Exhibit 28.

Certified copy of the case of the Pacific Coast Fuel and Ice Company vs. the Columbia River Orchards Company, introduced in evidence, over same objection, marked Plaintiff's Exhibit 29.

Certified copy of the record case of John C. Kendal vs. Columbia River Orchard Company, introduced in evidence over same objection, marked Plaintiff's Exhibit 30.

A case may commence with the filing of the complaint or the service of summons. It is necessary to file the complaint at the time the first motion is heard or at the time default is entered, if there is no appearance.

Certified copy of the case of Carl D. Halls vs. Columbia River Orchard Company, introduced in evidence, marked "Plaintiff's Exhibit 31.

I was appointed receiver in the Kendall case. I think in that case I qualified, but the order was rescinded almost immediately on some showing from the other side or some request from the other side, and I never did anything. I didn't know of any property, or take any in to possession.

In the case of Fred Johnson, vs. Columbia River Orchard Company, I had a receiver appointed late in 1911, or early in 1912. The receiver was Harry

(Testimony of Oscar G. Heaton.)

E. Wilson, he resides now in Olympia Washington. That was very widely advertised or written up because immediately after that the Company went into bankruptcy. That was the commencement of the advertising throughout the northwest in regard to the affairs of the Columbia River Orchard Company.

Frank E. Green, was their attorney, in that action, and in several of these actions. He stated that he would let me take the receiver if they didn't settle in a certain time. They didn't do so, and we had a receiver appointed. Mr. Wilson came to Portland, to see what securities he could find, and I believe he took a list of the securities and he left the securities here, I believe, but took a list of them and brought it back with him.

Q. Now in this case that you had, I will ask you if you had a conversation with Mr. E. C. Kilbourne with respect to it?

A. I did.

Q. When was that?

A. Some time between the first and seventh of April.

Q. Will you state what that conversation was—what year?

A. That was 1911.

Q. State what it was and what brought it about?

MR. WOOD: I object to that as irrelevant and immaterial; after this transaction was closed.

(Testimony of Oscar G. Heaton.)

COURT: Unless it was an admission of some kind.

MR. WILLIAMS: We expect to show that Kilbourne told him in that conversation that he had been paid.

COURT: You may answer.

A. Why, I told him—I think I asked him if he knew the receiver had been appointed. In fact, this Mr. Bolen who was receiver had never been discharged; and he said it was news to him, or something like that, and that they had settled with him; the company had settled with him, and they were going right ahead to put in the plant, and that they would have water in the ditch in ninety days.

Q. State whether or not he said anything about—

MR. WOOD: I object to those leading questions. There has been a great many of them put to this witness.

COURT: Don't lead him, please. State what the conversation was, or what was said.

A. Well, I don't remember all of it. That was in substance what he said. He might have said something about—

MR. WOOD: It is not a question, Mr. Heaton, of what he may have said. We want you to give the best of your memory as to what was said.

A. Of course, it has been two years or more. He said that they had settled, the company had settled with them, and he thought they would be all right now.

(Testimony of Oscar G. Heaton.)

COURT: That was in April, I understand?

A. That was some time the first of April.

COURT: 1911?

A. Yes.

Q. State whether or not you informed him what the basis of your suit was?

A. Yes, sir, yes, I did.

Q. What did you tell him in that respect?

A. That they hadn't paid the interest on these bonds, and that I had reason to believe that they hadn't—there was a good many bonds that they hadn't paid the interest on.

Q. What did he say about that?

A. I believe he said that they paid—he though the interest had all been paid.

That suit was settled by giving me a mortgage on some land in Mason County. This land stood in the name of Howe, William F. Howe, who was their broker. The land was transferred to Godfrey, Godfrey and his wife signed the mortgage. They made an effort to settle after the commencement of the *a* action. They made a tender of the interest. It was made thru Scott I. Wallace and someone else. Scott I. Wallace is one of their brokers. The other one is also a broker. He was handling their bonds.

Cross Examination.

(By Mr. WOOD:)

I returned to Seattle for the practice of law in 1905 or 1906, would not say for sure which, and was

(Testimony of Oscar G. Heaton.)

engaged in the practice of law early in either in 1911 and close of 1910.

Q. What led you as a lawyer to be familiar with the Columbia River Orchard Company's bonds.

A. I wasn't until *these* case came up.

Q. You haven't any general familiarity with other bonds and the bond market in general in Seattle. have you?

A. I have knowledge of specific companies that have been doing business there.

A. That you have some connection with?

A. Well, more especially since that time than before.

Q. What I am trying to get at, is whether this knowledge you have of these bonds, was common knowledge on the street, which every lawyer would have, or which every man in Seattle might be presumed to have, or whether it was a knowledge that came to you in relation to special cases which you handled as an attorney?

A. Every lawyer wouldn't have it, but those who have had actions or had anything to do with the company would know.

Q. This would be something of the nature of a special and private knowledge from the fact that you were handling these cases?

A. Was obtained by investigation, and by having these claims against the company.

Q. Now, when was your first personal contact



(Testimony of Oscar G. Heaton.)

with the DeLarm project and the Orchards Company?

A. Why, it was early in the year.

Q. 1911?

A. Yes, I had—I was representing Mr. Hawkinson.

Q. Mr. Hawkinson?

A. Yes.

Q. Did that result in a suit or action?

A. No, he was the owner of these bonds, and some others. These bonds that he transferred to me.

Q. How many were there in value?

A. I think he had some \$1200. in value that I know of; I don't know that he had any others.

Q. And they were defaulted in their interest?

A. They defaulted in the interest on these bonds

Q. And you were endeavoring to collect the interest on the whole amount?

A. Well, he was urging me to take some proceedings some time before I did. The way wasn't clear to me, and when I did commence. I declared the whole amount due, and sued for the whole amount.

Q. Was that a suit for a receivership?

A. No, it was my intention to ask for a receiver, and then I discovered that a receiver had been appointed in this Taylor suit, and had never been discharged, so I filed a petition in intervention in that case.

Q. So you went in as an intervenor in the Taylor

(Testimony of Oscar G. Heaton.)

case. Now the Taylor case was finally settled, and the receiver discharged, wasn't it?

A. The receiver was discharged. There was some statement filed at that time to satisfy the court as to their—as to any other indebtedness, but that is not among the files.

Q. What became of the Hawkinson claims?

A. That was dropped because the bonds were transferred to me in the interim.

Q. You proceeded at that time no further?

A. No further in the Hawkinson.

Q. Were you paid your interest?

A. Paid what.

Q. Were you paid anything on those bonds?

A. No, except in the settlement, the final settlement of my claims.

Q. Is that when you got the mortgage?

A. Yes.

Q. That you have just spoken about?

A. Yes.

Q. Was that what was settled?

A. My claim was settled, yes.

Q. About what time of the year was that?

A. Well, that—from the records it was the 7th of April.

Q. As I understand it, you didn't have these records procured.

Q. What do you mean?

(Testimony of Oscar G. Heaton.)

Q. You didn't have these records procured, did you?

A. At the request of counsel, I had them transcribed.

Q. And you brought them with you.

A. No, they were mailed to counsel several days ago.

Q. Well, why wasn't the Taylor suit completed, showing the discharge of the receiver?

A. Doesn't it show that?

Q. No, it stops just short of that.

A. If you will excuse me, I think it does.

Q. Well, I may be mistaken. While you were being examined, I made a hasty look at it.

A. The stipulation reads as follows: Filed on the 8th, signed on the 7th. "It is hereby stipulated between Oscar G. Heaton, plaintiff in intervention, and the defendant, that the claims and demands of said plaintiff against defendant in the complaint herein set forth, are fully satisfied and discharged, and said action, so far as this plaintiff is concerned, may be dismissed."

Q. Yes, but meanwhile you had intervened, and there is no showing there that the receiver was ever discharged by the Court, as far as I can find.

A. Well, the order discharging the receiver followed that. If it wasn't there, why, it is an oversight.

Q. Well, it will be sufficient if you can testify that he was discharged following this stipulation

(Testimony of Oscar G. Heaton.)

A. Following that stipulation, and a statement filed, showing or purporting to show that they owed no debts in excess of a very small amount.

Q. Now, the next case in which there was a receiver appointed was this Kendall case, was it?

A. The Kendall case was pending all this time, but the receiver was not appointed until some time later.

Q. Was the Kendall case one of your cases?

A. No, it was brought by Mr. Cassius E. Gates, of Seattle.

Q. Do you know why they didn't have a receiver appointed when they first brought it—waited until after this other matter was settled?

A. I think he made an application soon after he brought it, and I think I know—I don't know as the records shows *ut*, but I know that payments were being made; that was the reason it was continued from time to time.

Q. What was the final disposition of the Kendall case?

A. The case is pending now. At least it was never fully settled.

Q. Well, I notice that there is an application in which the attorneys joined, for the *fischarge* of the receiver, and the dismissal of the receivership.

A. I am not personally familiar with what occurred after I resigned as receiver, but the records show that another receiver by the name of Glen Met-

(Testimony of Oscar G. Heaton.)

zer was appointed, and that he did, or apparently did, a great deal of work, and never got any money for it, and finally got a judgment against the intervenor, Mrs. Teer, and was allowed \$400. for his fees and expenses, and that he finally collected it just a few days ago from Mrs. Teer.

Q. Well, as far as the records here show, it shows that all the attorneys joined in an application for his discharge.

A. I don't know whether some one had been substituted in Mr. Gates place or not at that time.

Q. It says Gates is withdrawn on behalf of the plaintiff Kendall and William Totten, attorney for Emily T. Teer, on whose intervening petition, the receiver was appointed; it shows George A. Custer is attorney of record, and it goes on and shows that they asked for the discharge.

A. That may be.

Q. Your connection with this particular suit was that you were the first receiver appointed—is that it?

A. Yes sir, I happened to be sitting in the courtroom at the time the application was made, and the attorney suggested my name.

Q. And you resigned?

A. Well, some time afterwards. I didn't really do anything as receiver, because I thought there was no property.

Q. Now, this Steeley case—you had nothing to do with that as attorney, did you?

(Testimony of Oscar G. Heaton.)

A. Yes, I was attorney of record.

Q. You were attorney of record for the plaintiffs?

A. Yes.

Q. And how did that case come about?

A. The same way as a money matter.

Q. Was it a suit on bonds?

A. Yes, sir.

Q. For defaulted interest?

A. The interest on these bonds became due on the first of May. I think the first coupons had been cut when he traded for them and so he didn't have them; when the interest came due in May, I mailed the coupons through the bank in Portland, to the Trust Company in Portland. They were returned with the endorsement on the back of the coupon "See DeLarm & Biehl, Empire Bldg., Seattle."

Q. When was that that you mailed your application with the coupons

A. About the 30th of April.

Q. Well, this summons appears to have been filed May 16th.

A. That action I think you will find was commenced on the 12th by serving the summons and complaint.

Q. On the 12th day of May, 1911.

A. The 12th of May.

Q. I am not familiar with enough your practice, but the filing mark was May 16th. You commenced before that time, did you?



(Testimony of Oscar G. Heaton.)

A. By service of summons, and I think at the same time an application for a receiver on an order to show cause why a receiver should not be appointed.

Q. What became of that suit finally?

A. That was settled.

Q. Who settled it?

A. Settled through Mr. Edgar J. Wright, who was the attorney representing them.

Q. That represented some \$1600, did it?

A. Yes, sir.

Q. And have you anything to do with this other. the Pacific Coast Fuel & Ise Company?

A. No, sir.

Q. Do you know anything about that action, that suit?

A. I am—is Mr. Snyder the attorney of record in that action?

Q. Yes.

A. I may have talked with him about it, but I don't know much about it except what the records show.

Q. It seems to be a suit for the care of personal property. Is that what it was?

A. I think it was an adjuster's lien, foreclosure of, lien.

Q. Small sum, about \$150. or something of that kind?

A. Yes, sir.

Q. That was paid, wasn't it?

(Testimony of Oscar G. Heaton.)

A. No, it was satisfied by the sale of property.

Q. Now, were you connected with any other suits against this company than those we have spoken of?

A. I think I have mentioned them all—the case of Johnson v. The Columbia River Orchard Company.

Q. Was that the last one?

A. That was the last one I filed.

Q. When they went into bankruptcy?

A. Yes, sir.

Q. And that was along late in 1911 or the early part of 1912, wasn't it?

A. Yes, the action was commenced in July; early in July I made a trip to Portland here to find out what I could about the bonds. I saw Mr. Brazell at that time.

Q. The attorney?

A. Yes, that is the time he speaks of; Mr. Hodges being away and giving him the key. I didn't really get any information at all, except that I made a copy of that list of securities.

Q. Well, were you the attorney of record in that suit?

A. Yes, sir.

Q. Who was Mr. Johnson?

A. A client of mine.

Q. I know, but a resident of Seattle?

A. Yes, sir.

Q. What was his business?

(Testimony of Oscar G. Heaton.)

A. He was a carpenter.

Q. How did he get these bonds?

A. Traded for them.

Q. How many were there in value, par, face value?

A. \$1800.

Q. \$1500?

A. \$1800.

Q. \$1800?

A. No, it seems to me it was more than that. We were settling on a basis of \$1800.

Q. Who was Mr. Wilson?

A. He was an attorney of Seattle.

Q. What did he have to do with it?

A. Nothing, I guess, until his appointment as receiver.

Q. You said something about his coming over here to Portland did you?

A. Yes.

Q. Was that to get hold of the securities?

A. Yes, that was immediately after his appointment.

Q. Were you his attorney—the receiver's attorney?

A. No, sir, he didn't have an attorney.

Q. You didn't come with him to Portland?

A. No, sir.

Q. Then I suppose all you know about that trip is that he told you he had come.

(Testimony of Oscar G. Heaton.)

A. Yes, that is practically all I know about it.

Q. That would be hearsay. Well, now, what other litigations against the Orchards Company or any of these people were you associated with?

A. I think that is all that is shown in the record here.

Q. That is all that is shown here, but I mean is that all in fact?

A. I think so.

Q. You never made any other efforts to collect any sums from them?

A. No, sir.

Q. Were you ever the owner of any bonds yourself other than this first lot that we have spoken of that were assigned to you?

A. No, sir, except I had one given to me.

Q. What?

A. I had one given to me in 1911.

Q. Now, when you speak of the market value of the bonds, were they listed on the Exchange over there, and did they have a regular quotation and market value?

A. No, they never listed them; they had no value.

Q. As a matter of fact, they were only traded specially here and there in particular places. There wasn't any general dealing in them, as you would deal in securities, was there?

A. Well, it became so general that they—all these agents would carry ads in the paper offering them

(Testimony of Oscar G. Heaton.)

Q. Now, what agents? You have only spoken, I think of two.

A. This list of holders that is shown in—I think in the Taylor case; list of parties who ask permission to intervene in that action, or that if the Steely case *men* rather.

Q. Well, that was at what time in the year? That was along getting toward the summer of 1911, wasn't it?

A. Yes.

Q. Do you know anything about the bonds yourself prior to March, 1911?

A. No, except I had talked with Mr. Biehl prior to that time.

Q. Well, he would give them a good standing, wouldn't he?

A. He did, yes.

Q. You knew the Washington Trust and Savings Company over there that amalgamated with Dexter Horton?

A. Yes.

Q. Now, that is a first class company, isn't it?

A. Yes, sir.

Q. And it was trustee?

A. It was under the old management.

Q. Under the old management?

A. Yes.

Q. Now, while it was acting as trustee, didn't those bonds have a good name over in Seattle?

(Testimony of Oscar G. Heaton.)

A. I don't know much about it. I formed my own conclusions after the talk with Mr. Schram.

Q. What time was that?

A. That was early in the fall.

Q. After you talked with whom?

A. Mr. Schram.

Q. Who was he?

A. Mr. Schram, the president of the old company

Q. Of the old Washington Savings & Trust Company?

A. Yes, sir.

Q. Well, they as a matter of fact, resigned?

A. I believe so.

Q. But, as far as the general public was concerned: if you know, as long as they stood as trustee, didn't the general public look upon these bonds as good?

A. Why, I think the fact that they were trustee had something to do with the project getting as far as it did, or going as well as it did.

Q. Did you ever know yourself, along in the latter part of 1910, or in that period, of any of those bonds being sold or exchanged at par?

A. Yes, sir.

Q. Now, as a matter of fact, Mr. Heaton, about the time that this trust company, the Washington Savings & Trust Company resigned, and about that time March, 1911, these bonds started on the decline, and they went swiftly and more rapidly as it was evident the people were in deep water until it was evi-



(Testimony of Oscar G. HeatON.)

dent they had little or no value, and it took them until about the end of the year to finish up. Isn't that the fact?

A. I think that is the fact, yes sir.

Q. You testified about talking with Mr. Kilbourne. I am not sure that it has been clearly differentiated. There are two Kilbournes. I think you said you knew them both.

A. Mr. E. C. Kilbourne, I think.

Q. You were talking exclusively of Mr. E. C. Kilbourne?

A. Yes, sir.

Q. Have you had an intimate acquaintance with them, or casual? acquaintance, or business acquaintance, or what is the nature of your acquaintance?

A. Not intimate acquaintance; a casual business acquaintance.

Q. When you talked with E. C. Kilbourne, early in April, he expressed surprise that the interest hadn't been paid, did he?

A. I believe he did.

Q. And said that they had been paid, and were going to complete the work, or something of that kind, expected to have water on it?

A. Would have water in the ditch in 90 days.

Q. Did he indicate to you that he thought—that he was under the impression that the bonds were good?

A. He carried that impression, yes.

(Testimony of Oscar G. Heaton.)

Redirect Examination.

(Questions by Mr. WOODCOCK.)

Was the matter of the bonds discussed between you and Kilbourne at that time, the value of them?

A. I think it was.

Q. How did it come about?

A. How is that?

Q. How did the conversation come about?

A. Well, I told him that I had some bonds that they hadn't paid the interest on, and that I felt sure there were others.

Q. He thought the bonds were all right; that is the way you remember the impression he made on you.

A. Yes, he seemed to carry that.

Q. Was suggested to you?

MR. WOOD: That is leading.

COURT: Don't lead him.

MR. WOOD: You put something in witness' mouth he never said. It is worse than leading.

Q. Well, what did he say about that? I guess that's right.

A. He said the bonds would be all right, just as soon as they got the water on the property; it all depended on that.

Q. Now, you testified in cross examination, in reference to having a conversation with—what was his name—Mr. Schram. What did he inform you about the situation?

A. Well, he said in general terms what was re-

(Testimony of Oscar G. Heaton.)

quired before any bonds were issued; that they must deposit with the company \$125. for every \$100. of bonds issued, and he didn't show me the securities but I understood they were first mortgages, and I was quite favorably impressed with the thing at that time, but I soon discovered - - -

Q. What was the date of that?

A. Well, that was—that was early in the year.

Q. Of 1911?

A. Yes.

Q. Now, you say you soon discovered. What did you discover?

A. I discovered that this company was being used as a cat's paw; they were simply depositing with them any kind of security, and that the trust was not being properly carried out.

Q. When did you discover that?

A. Well, shortly before I intervened in this case in May.

Q. In your testimony in chief, I asked permission to make one question a little more definite. When Mr. E. C. Kilbourne talked with you, and he said "they," did you understand or was anything said about who was meant by "They"?

A. Well, I knew that their company had contracted for putting in the pumping plant.

Q. Did you know who constituted the company?

A. No, I do not; it was Kilbourne—it was formerly the Kilbourne-Clarke Company.

(Testimony of Oscar G. Heaton.)

Q. When did you demand your interest?

A. In my own case?

Q. Yes.

A. Oh, some time prior to intervening; a long time oh, it was probably in March.

Q. March, 1911?

A. Yes.

Q. Where did you go to demand your interest?

A. I don't remember just what I did, but I made demand several places. I tried to see Mr. Biehl, and Mr. DeLarm personally. It was pretty hard to see them. I made demand at the Office I think.

Q. I will ask permission to ask a leading question Did you go to the Washington Trust Company to demand your interest—who was supposed to be the trustee, for the outfit at that time?

A. I think I did, and was informed that *the* had—that they were no longer trustee.

Q. That was after they resigned?

A. Yes, they hadn't—I learned subsequently they hadn't been discharged.

Q. Well, I will ask you what the fact is as to making your various demand of the people that you had gone to, whether you secured any money at all on your bonds? Either for interest or otherwise?

A. Not a cent.

Q. Did you secure any money at all?

A. Oh, in the final settlement?

Q. Yes.

(Testimony of Oscar G. Heaton.)

A. Yes, they paid the interest in cash and the costs, and gave me a mortgage for \$600. which was the face of the bonds on this monition.

Q. Then you surrendered up the bonds?

A. I surrendered the bonds.

Recross Examination.

(Questions by Mr. WOOD.)

You knew that the Kilbournes were the contracting engineers for putting in the pumping plant, did you?

A. Yes, the Kilbourne-Clarke Company, or the Kilbournes personally.

Q. When was it you had this talk with Schram?

Q. Well, it was early in January, to the best of my recollection.

Q. Of 1911?

A. Yes, sir.

Q. You said that you were favorably impressed with his talk, but afterwards you had reason to believe—came to the belief that they were being used as a cat's paw. Now, what was it that led you to that belief?

A. Why, when—I got from them or my attorney Mr. Hammond, got from the Trust Company, a copy of the securities which had been filed at that time, consisting of either four or five land contracts and water mortgages, some of each, and after looking those over, I was convinced that there was no value there, no substantial backing because the mortgages

(Testimony of Oscar G. Heaton.)

were \$16,000. on each quarter section, and nothing to show that the title was in the parties; the title was in the Government; as far as we could discover. There was no abstracts filed with the Trust Company, and no opinion as to title.

Q. Now, if I remember correctly, you said that it was this conclusion that led you to intervene in the Taylor case; was that right?

A. No, I was sparring along there. I didn't know just what to do until I discovered this receiver had been appointed in the Taylor case and never discharged.

Q. I was trying to get at the date a little bit. I only want first to know whether I was right in saying that your discovery of what you thought were the insufficient securities led you to intervene in the Taylor case.

A. Well, Mr. Hawkinson had been after me for some time to do something to bring an action of some kind to get things started. He used to come to my house every morning before breakfast.

Q. Could you indicate from your independent memory, when it was you got this list of securities, examined them, and came to the conclusion that they were in bad shape. I want to get the time and date, approximately.

A. Well, I think that was - - -

Q. For example, I don't want to interrupt you,



(Testimony of Oscar G. Heaton.)

but for example, would it be before or after your Taylor intervention?

A. I think it was just about the time I intervened. It might have been immediately after.

Q. It was not that, then, that really was the animating cause that induced you to intervene?

A. No, they were delinquent. If I had followed my instructions, I would have brought an independent action early in March, but I didn't do it.

Q. But you think now, as nearly as you can place it by independent recollection, that you got these securities, and *came* to this conclusion about the time you intervened. Might have been a little before or a little after; is that right?

A. That is probably the first time that I obtained a definite information as to what securities were behind the bonds.

Q. Yes, but I want to get now the date of that?

A. That was about the first of April.

[Testimony of Pearl M. Day, for the Plaintiffs.]

PEARL M. DAY, witness called on behalf of plaintiffs, being first duly sworn testified.

I reside at 472 Yamhill Street, Portland, Oregon. Lived in Portland, three years, occupation stenographer and bookkeeper. Was acquainted with George C. Hodges, worked for the Oregon and Washington Trust Company in 1911. Commenced working for them the 1st of March, 1911, continued until

(Testimony of Pearl M. Day.)

about the last of February 1912. My duties in the office were stenographer. I did a little clerical work. They kept some books in the office. They had a ledger, and the books of the Puget Sound Realty Company, and the Oregon and Washington Trust Company. Mr. Hodges, was running the Puget Sound Realty Company, was engaged in exchange in real estate business. Other books kept in the office, just had a sort of memorandum book.

A book was handed the witness and she identified it as one of the books kept in the office of the Oregon and Washington Trust Company, book marked "Journal." Mr. Hodges kept the book. I did the writing in it. I wrote the page marked "List of Water Mortgages," and the pages marked "Sales Contracts." I wrote the top part in this page, marked "Bellingham Development Company's Bonds." I don't know who wrote the bottom part. The list headed "List of Water Mortgages was made by Mr. Hodges. Mr. Hodges would call off and I would write them down. Wrote down the names and amounts he called off from the water mortgages that he had. Had them there in the office I saw them. I think that was written in July 1911, June or July.

Witness was handed a jacket marked "Jennie C Koppen Water Mortgage, \$16,000. No. 7," and identified it as one of the mortgages in possession of the Oregon and Washington Trust Company. There were two Jennie C. Koppen mortgages.

(Testimony of Pearl M. Day.)

Witness was handed a jacket marked "No. 12 Eli Montgomery Water Mortgage, \$16,000.," and identified as *on* Mr. Hodges had in checking the mortgages.

Witness was handed an envelope marked "No. 8 Mary A. Domay, water mortgage \$20,000.," and identified as one in the list, and also an envelope No. 9, W. S. Webber, Water Mortgage \$16,000. and identified as one in the list.

Also one marked No. 11, James Perry, Water Mortgage \$8,000. and identified as one in the list.

One marked No. 6, William E. Stickles, Water Mortgage, \$16,000. and identified as one in the list.

Also an envelope marked No. 2, Virgil H. Robinson, water mortgage \$16,000. and identified as one Mr. Hodges had.

Also one marked No. 1, Emil Cords, water mortgage \$16,000. and identified as one that Mr. Hodges had.

MR. WOOD: Let me make a suggestion. It is evident that this young lady is tallying with the book. Now, if you are satisfied that book is right, you can put them in in that way. As far as I am concerned. I will consent to it.

MR. WOOD: I just wanted to expedite. She pulls each one out of the envelope and compares with the book, I don't object to it at all; I dare say it is all right. I was only trying to shorten it.

Witness identified a whole bunch of envelopes con

(Testimony of Pearl M. Day.)

taining water mortgages as ones in Hodges possession.

Q. For what purpose, did Mr. Hodges have these mortgages?

A. As I understood, they were to guarantee the bonds back of the bonds.

Certified copy of Desert Land Mortgage, Jennie C Koppen, to Columbia River Orchard Company, introduced in evidence marked plaintiffs' exhibit 32.

Also a certified copy of mortgage of William E. Stickel to the Columbia River Orchard Company, marked "Plaintiffs' Exhibit 33."

Certified copy of James Perry mortgage to the Columbia River Orchards Company marked "Plaintiffs Exhibit 34."

MR. ERSKINE WOOD: These all go in under our same objection.

COURT: They are not duplicates of any offered heretofore?

MR. WILLIAMS: No, they are not duplicates at all.

To shorten, your Honor, is no objection to that method, we would like to simply read the description of the land and the date of five of these mortgages into the records.

COURT: They are on this list?

MR. WILLIAMS: They are on this list that Miss Day has just identified.

(Testimony of Pearl M. Day.)

The water mortgage of Walter S. Webber to the Columbia River Orchards Company, dated January 22, 1910, covering the southeast quarter of Section 24 Township 14 North, Range 25 East, W. M., and the note accompanying it is dated June 1, 1910, given for \$16,000., due June 1, 1912, and signed by William S. Webber and Cora M. Webber. The mortgage is on the same form as the certified copies.

The mortgage of Eli J. Montgomery, to the Columbia River Orchards Company, covering Desert Land Entry No. 1545, covering the northwest quarter of section 34, Township 14, North, Range 25 East Willamette Meridian, in Grant County, Washington, on the same form as the certified copy of the water mortgages already offered in evidence. The note is dated September 15, 1909, due April 1, 1911.

Water mortgage given by G. J. Heuver, dated the 7th day of August, 1911, covering the southeast quarter of Section 20, Township 15 North, Range 27 East W. M. in Grant County, Washington; note due *April* 1, 1916, \$16,000. This mortgage is Washington Orchard Irrigation and Fruit Company and is headed "Water Mortgage Contract."

The water mortgage of Geo. Holtzner, covering desert entry made in the United States Land Office on the southwest quarter of Section 34, Township 15 South, Range 25 East, Willamette Meridian, in Grant County, Washington, note dated August 11, 1911, due April 1, 1916, for \$16,000.



(Testimony of Pearl M. Day.)

Also water mortgage contract running to the Washington Orchard Irrigation and Fruit Company, by Charles Rex Curtis, covering a homestead entry made in the United States Land Office at North Yakima, Washington, the 21st day of August, 1911, on the southwest quarter of Section 32, Township 15 North, Range 28 East W. M. Note dated October 11, 1911, due April 15, 1915, for \$16,000. signed by Charles Rex. Curtis.

Also water mortgage made to the Washington Orchard Irrigation and Fruit Company by Mary E. Greenwell, covering a desert land entry made in the United States Land Office at North Yakima, Washington, on the 26th day of June, 1911, on the northeast quarter and the southeast quarter of the northwest quarter, Section 32, Township 14 North, of Range 25 East, W. M., in Grant County, State of Washington. Note dated July 12, 1911, for \$20,000. due April 15, 1915, and signed by Mary E. Greenwell

Also water mortgage running to the Washington Orchard Irrigation and Fruit Company made by Allison H. Ward, on patented land, southeast quarter of Section 26, Township 15 North, Range 26 East, W. M., in Grant County, Washington, and note dated July 30, 1911, due August 1, nineteen-something being scratched out, for \$16,000. signed by Allison W Ward and Alice G. Ward, and on the note in writing "This note is given in accordance with the terms of a water mortgage contract executed July 30, 1911.



(Testimony of Pearl M. Day.)

Water mortgage contract running to the Washington Orchard Irrigation and Fruit Company from Albert Blum, covering homestead entry and D. E. entry, the 20th day of September 1906, and marked "U. S. Patents," covering the northeast quarter and the east half of the southeast quarter of Section 32, Township 15-25, note dated July 12, 1911, due April 15, 1915, for \$24,000. Signed Albert Blum.

COURT: Those are not on the list, I understand.

MR. BRYSON: There are fifteen mortgages that are not on the list. These are fifteen that Mr. Koppen had.

MR. WILLIAMS: Oh, I didn't know that.

MR. ERSKINE WOOD: I understood you were reading from those she had identified.

MR. WILLIAMS: I will finish reading these and connect them up later.

MR. FLEGLER: I understand these were all taken after this transaction.

MR. WILLIAMS: Yes, I will connect this up with Mr. Koppen. I will finish the list so as to connect them.

Also water mortgage contract made to the Washington Orchard Irrigation and Fruit Company by Easton A. Rose, covering a desert land entry, the northwest quarter of Section 34, Township 15 North, Range 25 East, Willamette Meridian, in Grant County, Washington, and note dated July 12, 1911, for 16,000, due on or before April 1, 1915.

(Testimony of Pearl M. Day.)

Also water mortgage contract, dated August 9, 1911, to the Washington Orchard Irrigation and Fruit Company of John Demert, covering homestead entry to the southeast quarter<sup>l</sup>—with a dash after it, Section 30, Township 28, North Range 28 East, W. M., containing 188 more or less acres in Grant County, Washington, with note dated August 9, 1911, due April 1, 1916, for \$18,000.

Also water mortgage dated the 12th day of July, 1911, running to the Washington Orchard Irrigation and Fruit Company, of William M. Hunter, covering homestead entry the 24th of September 1907, on the southwest quarter of the southwest quarter (original H. E.) made September 24, 1907, and the north half of the southwest (additional H. E.) made June 26, 1911, with a note dated July 12, 1911, for \$16,000. due April 1, 1915, signed by Dr. William Hunter and Mrs. William Hunter.

Also Water mortgage contract by Lee Richmond and Nellie Richmond to the Washington Orchard Irrigation and Fruit Company, covering the north half of the north half of Section 2, Township 13 North, Range 25 East, W. M., in Grant County, Washington. Doesn't appear to be any note with the mortgage.

On this mortgage of William Hunter is a notation in pencil opposite the description "32-14-25."

Also water mortgage made on the 11th day of August, 1911, to the Washington Orchard Irrigation

(Testimony of Pearl M. Day.)

and Fruit Company, of George Holtzner, on the southeast quarter of Section 34, Township 15 North, Range 25 East, W. M., in Grant County, Washington, with a note dated August 11, 1911, due April 1, 1916, for \$16,000.

Also water mortgage given to the Washington Orchard Irrigation and Fruit Company by Nelson Litchfield, covering Desert Entry made the 6th day of January, 1911, on the southwest quarter of Section 26, Township 15 North, Range 26 East, W. M., with a note dated August 11, 1911, for \$16,000. due April 1, 1916, signed Nelson Litchfield.

Also a water mortgage dated the 25th day of July, 1911, to the Washington Orchard Irrigation and Fruit Company by F. H. Heipp, covering the northeast quarter of Section 20, Township 15 North, Range 26 East, W. M., in Grant County, Washington, with a note dated July 25, 1911, due April 2, 1916. for \$16,000., signed F. H. Heipp.

Also a water mortgage running to the Washington Orchard Irrigation and Fruit Company, of Thomas L. Rydberg, covering the west half of the southeast quarter of Section 32, Township 15 North, Range 25 East, W. M., with a note dated August 8, 1911, for \$8,000. due April 1, 1916, signed John L. Rydberg.

Also a water mortgage running to the Washington Orchard Irrigation and Fruit Company of W. A. Joyce, covering the northeast quarter of Section

(Testimony of Pearl M. Day.)

28, Township 15 North, Range 26 East, W. M., Grant County, Washington, with a note dated July 25, 1911, due April 1, 1916, for \$16,000. signed by W. A. Joyce.

Also a water mortgage running to the Washington Orchard Irrigation and Fruit Company of Tobias K. Skaar, on the southwest quarter of Section 20, Township 15 North, Range 27 East, with a note of August 14, 1911, due April 1, 1916, for \$16,000, signed Tobias Skaar.

Also a water mortgage contract of Mary A. Tucker, running to the Washington Orchard Irrigation and Fruit Company, dated the 30th day of July, 1911, on the southeast quarter of Section 2, Township 14 North, Range 24 East, W. M., with note dated July 31, 1911, due April 1, 1915, for \$16,000. signed Mrs. Mary Tucker.

Also Desert Land Mortgage, dated April 19, 1910, signed by Adolph Lindauer, covering the northwest quarter of the southwest quarter, and the south half of the southwest quarter, and the southwest quarter of the southeast quarter of Section 30, Township 14 North, Range 26 East, W. M., in Grant County, Washington, with a notation that water shall be put upon the land on or before the 15th day of July, 1911. This mortgage has not been acknowledged. With a note purporting to be signed by Adolph Lindauer, dated April 1910, due May 15, 1911, for \$16,000.

(Testimony of Pearl M. Day.)

These mortgages all being in the same form as the certified copies in the record.

Q. At the time that you listed those, Miss Day, did you list all of the mortgages that there were in the office?

A. I listed only as Mr. Hodges called them off to me. I don't know of course, any more than what he gave me.

Q. Examine the book that you have testified about, on the page headed "Real Estate Mortgages," and state if you know who wrote that page?

A. This seems to be my writing, I couldn't identify the figures.

Q. The writing is yours?

A. I think it is mine.

Q. What did that mortgage of \$1,000,000. refer to? Was there a mortgage of that kind in the record, or in the office at that time?

A. Well, I have heard them speak about a mortgage, a million dollar mortgage; I don't remember now just what it was.

Q. Was there also one there of \$5,000,000?

A. I don't recollect their speaking about it.

Q. By whose directions did you make these entries in this book?

A. Mr. Hodges.

MR. WILLIAMS: We offer in evidence a certified copy of mortgage for a million dollars, given by the Washington Orchard Irrigation and Fruit Com-

(Testimony of Pearl M. Day.)

pany, to the Oregon and Washington Trust Company, dated the 15th day of March, 1911, and recorded in the records of Grant County, Washington, on February 3, 1912.

MR. ERSKINE WOOD: No objection to a copy, but irrelevant and immaterial.

Marked "Plaintiffs' Exhibit 35."

The witness was handed a mortgage purporting to be for \$5,750,000., and the signature of W. E. DeLarm, was identified by the witness, and marked for identification, "Plaintiffs' Exhibit 36."

A book marked "Journal," containing a list of the mortgages and sales contracts identified by the witness was introduced in evidence over the objection as irrelevant and immaterial, marked "Plaintiffs' Exhibit 37."

Q. Miss Day, were you an officer at one time of the Oregon and Washington Trust Company?

A. Yes.

Q. Did you have any financial interest in the company?

A. No.

Q. At whose request did you become an officer of the company?

A. Mr. Biehl's.

Q. What position did you occupy with that company?

A. Why I was secretary of the board of directors.



(Testimony of Pearl M. Day.)

Q. Did the board of directors ever have a meeting?

A. No. I was sent over to the Yeon Building to one of the meetings, but when I got there, they were all gone.

Q. How many offices did Mr. Hodges have? How many rooms in his office?

A. Three.

Q. How were they arranged?

A. There was a reception room, and then two offices off from that.

Q. What connection did H. H. Humphrey have with the Oregon and Washington Trust Company?

A. Well, I really don't know what his connections were.

Q. Was he there at the office?

A. He was there—when I first went there, he was there about two or three months, and he was doing practically the same thing that Mr. Hodges was doing.

Q. When did Mr. Hodges leave Portland, if he did leave?

A. In September, 1911.

Q. Who took his place?

A. Mr. Biehl.

Q. You may state whether or not they had any abstracts in the office there, real estate abstracts, abstracts of real estate covering these mortgages that they had?

(Testimony of Pearl M. Day.)

A. I don't—not that I know of. I don't know whether they did or not.

Q. Do you know whether they kept a statement of the bonds that were certified to by the Oregon and Washington Trust Company?

A. No, I don't believe they did.

Q. You saw a great many bonds there, didn't you?

A. I saw a number of bonds, but I didn't keep any record of how many were there.

Q. You were not instructed to keep a record?

A. No.

Q. State whether or not your salary was paid promptly?

A. No, it wasn't.

Q. What was their financial condition during the time that you were with them, as to paying their bills?

A. When Mr. Hodges, was there, he was quite prompt paying them by the 10th of the month.

Q. How was it after Mr. Biehl took charge?

A. Well, the office was sued a couple of times.

Witness identified letter of George C. Hodges, dated March 1, 1911, and introduced in evidence over same objection and marked Plaintiffs' Exhibit 38.

Witness identified letter dated October 26, 1911, signed "Jack," as in the hand writing of Mr. Biehl, introduced in evidence over same objection, marked "Plaintiffs" Exhibit 39.

Q. You may state, Miss Day, what disposition

(Testimony of Pearl M. Day.)

Mr. Hodges was making of the bonds that were sent to him by DeLarm and Biehl, during the time that you were with them?

A. Why, he was giving them in exchange for real estate.

Q. State whether or not they had considerable dealings in bonds being traded for real estate?

A. Yes, they did.

Q. What activity did they show in regard to hunting up trades of real estate for bonds?

A. Why, I was instructed to answer ads in the paper.

Q. What kind of ads?

A. For people wanting to exchange real estate for other securities.

MR. ERSKINE WOOD: May I interrupt here to ask what time this was.

Q. When was this, Miss Day?

A. That was about May or June, 1911.

Q. Did that continue all through the time that you stayed with them?

A. Not so much as it was when I first went there.

Q. When you first went there, there was some activity in that respect?

A. Yes, sir.

Q. Do you know whether the Oregon and Washington Trust Company had a banking account, or not?

A. For a while, I think they carried it at the

(Testimony of Pearl M. Day.)

bank in the Chamber of Commerce, not the Bank of California, but the other one.

MR. ERSKINE WOOD: Hartman & Thompson?

A. Yes, Hartman & Thompson.

Q. How were you paid?

A. By check.

Q. By whom was the check signed?

A. Mr. Hodges.

Q. Individually?

A. Yes.

Q. They were not signed then on behalf of the Oregon and Washington Trust Company?

A. No.

Q. Then the bank account was not the Oregon and Washington Trust bank account?

A. It was at the Hartman Thompson for a very short time, and in the other bank, it was Mr. Hodges' name.

Q. Do you know whether they ever acted as trustee in any other matter than the Columbia River Orchard bonds?

A. They were trying for another company, I don't exactly remember the name of the company now.

Q. Trying to organize another company?

A. Yes, I think it was a lumber—timber deal, timber company.

Q. Would you know the name of the company if you heard it?

A. I think I would.

(Testimony of Pearl M. Day.)

Q. Imperial Timber Company?

A. No.

Q. They never consummated that?

A. No.

One of the sales contracts introduced in evidence marked Plaintiffs' Exhibit 40.

Cross Examination.

(By Mr. ERSKINE WOOD.)

Q. When did you go to work for Hodges?

A. In March, 1911.

Q. And that is when the trading in bonds was most active, or was it most active in June? I didn't understand what you meant?

A. During the period from there to about June.

Q. You went to them the first of March?

A. Yes.

(Questions by Mr. C. E. S. WOOD.)

When did you become a director in that company?

A. After Mr. Biehl took charge of that office.

Q. About what date?

A. I don't remember the date. It was after September.

A. But you never sat in any board meetings.

A. No.

Q. They sent for you once, and then ran away from you?

A. Mr. Biehl told me there was to be a meeting in Mr. Brazell's office at the Yeon Building. When I got there, he said they had all gone.

(Testimony of Pearl M. Day.)

Q. Didn't wait for you. That is the meanest thing I have heard about it.

Witness excused.

MR. BRYSON: Mr. Wood, we will ask you to stipulate that the list of mortgages which were read off by Mr. Williams the mortgage of Virgil H. Robinson, the mortgage of Emil F. Cords, the land contract of F. C. Koppen, the mortgage of Alfred Gagner, mortgage of Laura Wattles, mortgage of Jennie C. Koppen, mortgage of William Stickel, mortgage of James Perry, are identical mortgages with the certified copies which we introduced in evidence.

MR. WOOD: Yes, if you say they are.

### **F. C. Koppen Recalled.**

#### **Cross Examination.**

(By Mr. WILLIAMS.)

Mr. Koppen, did you have a hand in taking a lot of water mortgages for the Washington Orchard Irrigation and Fruit Company?

A. Yes.

Q. In 1911? . A. Yes.

Q. When these mortgages were first taken, were they acknowledged? Were the acknowledgments of the mortgagors taken?

A. No, not right away.

Q. How long was it afterward that they were taken?

A. Oh, I can't say; it was some time, some weeks.



(Testimony of F. C. Koppen.)

Q. I will hand you the water mortgage of Dr. W. M. Hunter, and ask you if that is one of them?

A. Yes, Hunter's is one of them.

Q. Also John Demert, is that one of them?

A. Yes, that is one of them.

Q. And Easton A. Rose?

A. Yes.

Q. And Albert Blum?

A. Yes.

Q. And Mary E. Greenwell?

A. Well, no, I didn't have anything to do with that one, nor Blum. You mean just the mortgage that I secured for them?

Q. Yes, and that you acknowledged?

A. Yes, Yes, all right.

Q. You acknowledged, is that one of them, Mary E. Greenwell?

A. Yes, this is.

Q. And Allison H. Ward?

A. Yes.

Q. And G. J. Heuver?

A. No.

Q. What?

A. No.

Q. You didn't acknowledge that one? Was it among the ones?

A. Yes, he gave it to me to acknowledge. Then I remember that I wasn't there, and I struck out my name.

(Testimony of F. C. Koppen.)

Q. That was among the list that you had at that time, and securing?

A. Yes.

Q. Examine that of Mr. Heuver, and state if that was one of them?

A. No, that is struck out.

Q. Well, was that among the list that you had at that time?

A. Yes, oh, yes.

Q. How many were there of these mortgages you took up there?

A. I think there were fifteen all together.

Q. After you got the acknowledgments of those taken, what did you do with them?

A. That was about the time that we learned of the break-down of the company, and I think we kept them for a few days, not knowing what to do with them, and then some one, Beihl, I think, wrote to me to Portland, to send them there; but as I remember I didn't. I sent them to, I think, the receiver in Seattle.

Q. Mr. Wilson?

A. Mr. Wilson, yes.

Q. Now, you said that Mrs. Koppen sold some land to the Columbia River Orchard Company. What was the consideration for that?

A. She made—she sold twice—no, to the Columbia River Orchards Company—the consideration of

(Testimony of F. C. Koppen.)

that was stock in the Columbia River Orchard Company. That was 80 acres only.

Q. Was that before DeLarm and Biehl got hold of the corporation?

A. Yes.

Q. What did he sell afterwards to them?

A. She sold the rest of that quarter section to the Washington Orchard Irrigation and Fruit Company

Q. What was the consideration of that last sale?

A. It was bonds.

Q. What kind of bonds?

A. They were Washington Fruit and Irrigation Company bonds.

Exhibit 41, discussed with the witness and marked for further identification.

The mortgage of Mary A. Domay, was introduced in evidence and marked "Plaintiffs' Exhibit 42.

Q. Now, there appears in evidence, Mr. Koppen, a certified copy of a water contract given by you to the Columbia River Orchards Company.

A. Yes, I gave one.

Q. Now, where is that land located with reference to the high ridge?

A. It is on the high bench.

COURT: What do you mean by the high bench? Above the rim rock?

A. Yes.

Q. Above the rim rock, not down on the flat?

(Testimony of F. C. Koppen.)

A. No it is above.

Q. Now, these fifteen mortgages that you assisted in taking up there in July and August; and which you acknowledged later, now where are they with reference to this rim rock?

A. They are nearly all—I think they are all up on top of the rim rock.

Q. How far from the water ditch of the Columbia River Orchard Company?

A. All the way from three to ten miles—twelve miles.

Q. You may state, Mr. Koppen, whether or not you had any conversation with Mr. DeLarm, with regard to the securities behind the bonds?

A. Yes, I did.

Q. Did he tell you what the securities were?

A. Yes.

Q. State what he said about them.

A. Well, he said that in the first place they were secured by deeds and first mortgages to the amount of 125 cents on the dollar, and that after that they were further secured by the guarantee of the Washington Fruit and Orchards Company, so that all the property they owned, the pump house and the machinery and the ditches and the land, was additional security to this 125 per cent in the first place. Then later on he told me that the sales contracts were placed with this Washington and Oregon Company, as a sinking fund to pay off these bonds; that was a

(Testimony of F. C. Koppen.)

third security, so that they would, in the course of seven or eight years, be automatically retired.

Q. Did he state to you what lands these land contracts covered?

A. Beg pardon.

Q. Did he state to you what lands these land contracts covered, that were deposited with the Oregon and Washington Trust Company as security for the bonds?

A. No, he didn't definitely, but he gave us to understand that these lands were located in Oregon, Idaho and the Sound country here.

COURT: You mean sales contracts.

Q. I mean sales contracts, the lands that they were selling.

A. Oh, the land that they were selling in Section 20 and Section 16?

Q. Now, did he state what those mortgages covered, that they pretended to have behind the bonds?

A. Yes, he said it was principally farm property, but also city property in Oregon, Idaho and Washington, saw mills and stores, and one thing and another.

Q. You may state whether or not later on you had a conversation with him in regard to these mortgages again, and what he said about it.

A. After he told me the first time?

Q. Yes.

A. That was the time that he told me about the

(Testimony of F. C. Koppen.)

sales contracts being deposited as a sinking fund.

Q. Now, later on in 1911, did you have another conversation with him in regard to these mortgages that were behind the bonds?

A. Oh, yes, we talked about it every time I saw him.

Q. Did he make any different statement to you about the mortgages that were behind the bonds?

A. Eventually he did; when he was asked outright where this property was, he admitted that it was the property at Wahluke that was behind the bonds.

Q. What time of the year was that, Mr. Koppen?

A. Why that was just before, a short time before he went into bankruptcy; late in 1911.

Q. Now state a little more fully what he said about that and what you said.

A. I remember Mrs. Koppen asking him about—asking him outright if this property at Wahluke was the mortgages that he had referred to as being security behind the bonds, and he hesitated a while and finally said yes.

Q. Was anything further said in that conversation about mortgages?

A. Yes, I asked him how many bonds were issued and he said \$300,00—that is \$300,000 I think is what he said, and then I asked him if at any future time *ther* could be more bonds issued on this same security, so as to weaken the security, and he said, no, such a thing couldn't be done; I think he said it



(Testimony of F. C. Koppen.)

would be unlawful, or any way he said it couldn't be done; that on this security that was deposited there could never be any more bonds issued.

Q. When was that conversation?

A. That was at the time that we made the sale to him; this was before the sale was concluded.

Q. Now, I am speaking, Mr. Koppen, about the time that he admitted the water mortgages were the mortgages that were behind the bonds.

A. I think that was some time in - - -

Q. I want you to state a little more fully the conversation that you had at that time with him, if you can.

A. Well, I can't state exactly what we said but it was in the way of the standing of the company at that time, whether he would be able to pull through or not, and as to the security behind the bonds, the value of the bonds, whether they were any good or not, and he maintained all the time that they were good and that he would make them good, but finally we pinned him down to tell us just exactly what the security was and then he admitted that it was the land that he had bought from us, and these water mortgages—were the only things behind the bonds.

Q. Now, how long after that conversation was it, as near as you can tell, that they went into bankruptcy?

A. A month or two.

Q. A month or two.

(Testimony of F. C. Koppen.)

A. It may possibly have been three months, I think not, though.

Q. Was the pumping plant completed at that time?

A. Yes.

Q. All completed?

A. I think so, yes; I think it was.

Q. Machinery all in; switchboards installed and everything of that kind?

A. Yes.

Q. Were the ditches completed?

A. Yes.

Q. Was the intake completed?

A. Yes.

Q. What was the reason they didn't put water on it?

A. Couldn't get the power.

Q. Do you know why they couldn't get the power?

A. Why as I understood it because they didn't have the money to put up, or couldn't show that they would use the power and be able to pay for it if the power company brought the line down to them-- went to that expense.

MR. WOOD: I don't know what value that point is to you but that is perfectly incompetent testimony unless you can show he has some knowledge.

Q. How did you gain this information?

A. Well, from DeLarm principally.

(Testimony of F. C. Koppen.)

Q. Did you talk with Edward C. Kilbourne about it any?

A. About the power to be had?

Q. Yes.

A. I don't recollect. If I did, I don't recollect what was said.

Cross Examniation.

(Questions by Mr. ERSKINE WOOD.)

Mr. Koppen, these water mortgages that you have testified about, did you secure them or merely acknowledge them? Did you secure some?

A. I secured most of them, yes.

Q. You went out among your neighbors?

A. Yes.

Q. And got them?

A. Yes.

Q. When did you do that?

A. I think it was during July and August, 1911.

Q. Got them all during those two months, you think?

A. No, I got some of them later; a few of them, one or two later.

Q. How much later?

A. A month or two.

Q. Did you get any of them up in October, then?

A. The Hunter mortgage may be as late as that, I don't remember.

Q. So up until that time you had faith in the project?

(Testimony of F. C. Koppen.)

A. I don't understand.

Q. Up until that time you had faith in the project?

A. Oh, yes.

Q. You thought it was a good project or you wouldn't have got your neighbors to go into it?

A. Yes, that is right.

Q. When did you have these conversations with DeLarm about the securities?

A. Well, principally at the time that we closed the deal for our land.

Q. When was that?

A. That was on April 22, 1911.

Q. And then of course you were satisfied with the securities?

A. At that time we believed them to be good.

Q. When did you have this talk in which you forced him to admit that the securities were all limited to the Wahluke lands?

A. That was in the latter part of 1911, I think.

Q. That is the nearest you can place it?

A. Yes; I think it was not more than a month or two before the collapse.

Q. Did you get any water mortgages for him after that?

A. Oh, my, no. Sometime before.

Witness excused.

[Testimony of M. Isabelle Forbes, for the  
Plaintiffs.]

M. ISABELLE FORBES, being called as a witness for plaintiffs, and being duly sworn testified.

(Questions by Mr. WILLIAMS.)

I reside in Seattle, Washington. My occupation at the present time, is assistant bookkeeper and filing clerk. During the year 1911, in the capacity of clerical work. I did some little bookkeeping, some stenographic work, and clerical work for DeLarm and Biehl. Went to work for them November 4, 1910, continued in their employ until January 4th, 1912. Mr. DeLarm was president of the Columbia River Orchard Company; Mr. Biehl was secretary. They ran the affairs of that corporation in their office at Seattle. The Washington Irrigation and Fruit Company were the same people, all the same thing. They had the affairs of that corporation in the office there.

I am acquainted with the signature of W. E. DeLarm, have seen him write frequently, and with the writing of A. J. Biehl, have seen him write frequently, and R. H. MacWhorter. Mr. MacWhorter, was connected with them in a general way, and I think one time he was trust officer, just for a short time of the Oregon and Washington Trust Company, and afterwards secretary of the Washington, Orchard, Irrigation and Fruit Company. Am acquaintanced with his hand writing, and know his signature. I

(Testimony of M. Isabelle Forbes.)

don't know the hand writing of H. H. Humphrey very well.

Signatures to the assignment of the Emil F. Cords water mortgage identified introduced in evidence over objection as irrelevant and immaterial and marked "Plaintiffs' Exhibit 43.

Another assignment introduced over same objection identified and marked Plaintiffs' Exhibit (43) (44).

Assignment of Alfred Gagner mortgage identified and introduced over same objection marked "Plaintiffs' Exhibit 44.

Another assignment of same mortgage introduced over same objections, marked "Plaintiffs' Exhibit 45, identified by witness.

Assignment identified and introduced, marked "Plaintiffs' Exhibit 46.

Affidavit of W. E. DeLarm, dated 19th day of August 1910, covering Desert Land Entry No. 1226, and some other property, identified and introduced over same objection, marked "Plaintiffs' Exhibit 47."

Assignment of Laura Wattle mortgage identified and introduced in evidence, same objection marked "Plaintiffs' Exhibit 48."

Another assignment identified and introduced, same objection, marked "Plaintiffs' Exhibit 49."

Handed book of the Washington Orchard, Irrigation and Fruit Company, identified as the minute book of the company the signature of W. E. DeLarm



(Testimony of M. Isabelle Forbes.)

and A. J. Biehl, as to pages 49, 50 and 51 identified also as to pages 52, 53, 54, 55, which were offered in evidence.

Mr. Wood cross examined the witness upon this point as follows:

MR. WOOD: What was your official position with this company?

A. Well, I don't know what I was.

MR. WOOD: I say, were you an officer?

A. I was supposed to be an officer; I don't know what I was, or anything about it; I just signed my name there, just as a lot of others have done. I don't know why they signed it.

MR. WOOD: In what capacity did you sign it?

A. I don't know. They just simply passed me that book and told me to sign my name to it.

MR. WOOD: Your name is signed in here, is it?

A. Yes, I think it is.

MR. WOOD: Well, will you find it, so I can see in what capacity it is signed. (Witness does so.) Is that your name?

A. Yes.

MR. WOOD: But you had nothing to do with making the book out?

A. I did not.

MR. WOOD: Or keeping the book?

A. No.

MR. WOOD: I will object to this as irrelevant

(Testimony of M. Isabelle Forbes.)

and immaterial, under the issue in the bill, and also as incompetent.

COURT: I understand Miss Forbes, that you recognize that as the minute book of the corporation?

A. Yes, sir.

COURT: Kept in the office. I think it is all right as to competency. Its materiality will be determined later.

Pages 49 to 51 introduced in evidence and marked "Plaintiffs' Exhibit 50," and pages 52 to 55, marked "Plaintiffs' Exhibit 51."

Court adjourned until May 15th, 1913.

**[Testimony of Lewis B. Sichlar, for the  
Plaintiffs.]**

LEWIS B. SICHLAR, being called as a witness on behalf of plaintiffs testified as follows:

I reside in Seattle, Washington, resided there 11 years. Occupation financial agent. Age 43 years.

Was acquainted with W. E. DeLarm and A. J. Biehl. Became acquainted with DeLarm in the fall of 1909. DeLarm left Seattle in the early part of February 1912.

Was familiar to some extent with the Columbia River Orchard Company bonds.

After the Columbia River Orchard Company, and the Washington Orchard Irrigation and Fruit Company, went into bankruptcy I was appointed as temporary receiver for both companies and later made

(Testimony of Lewis B. Sichlar.)

trustee of them. I was appointed trustee about the middle of March 1912.

Certified copy of petition in bankruptcy of Columbia River Orchard Company, introduced in evidence over same objection, marked "Plaintiffs' Exhibit 52," and other papers with reference to the bankruptcy proceedings introduced in evidence over same objection, marked Plaintiffs' Exhibit 53."

After I was appointed receiver I gathered together the assets of these two corporation, found the company owned some equities in acreage at Wahluke and was in position to maintain an action at law for the recovery of projected property which had been turned over to the Columbia River Water Company. Such a suit was brought, it resulted in a compromise finally, by which I paid the members of the Columbia River Orchard Company \$6500. in trustee certificates to compromise the suit and turned the property back to the trustee. The members of the Columbia River Water Company, were Edgar J. Wright and a Mr. Chapman, R. S. Chapman, and a Mr. Miller, I think. They had the title, claim and interest in and to the project over there, in so far as it pertained to the Washington Orchard, Irrigation and Fruit Company's properties. It covered the site of the pumping plant, and right of way for the ditches I think. I found no other property.

I investigated the status of the title of Section 29 Township 14 North Range 26 East, that was con-

(Testimony of Lewis B. Sichlar.)

tracted by the Columbia River Orchard Company, from Maltbie & Pearl. It was a conditional contract and the Irrigation Company having failed to comply with it and meet the payments the property reverted back to Maltbie & Pearl.

One or the other of the DeLarm companies, I believe, had a contract with the State for the East half of Section 16 and that also lapsed for the want of payment. They had an equity, I think, in Section 10, part of the 200 acres I mentioned before., they had an equity in that. The title at that time was in Mr. DeGraaf, I believe, I am not positive about that. Mr. DeGraaf, is a real estate man at Seattle. He acted as agent for the company occasionally in different business transactions, deals, etc., I didn't talk with Mr. DeGraaf, about the title, nor receive any communication from him. Mr. DeLarm, told me of the equity in the 200 acres along the latter part of January, probably a week or ten days before he left Seattle, 1912.

The property was heavily encumbered by mortgages held by lien holders and others. Mr. Fox, the contractor had the first mortgage amounting to sixteen of seventeen thousand dollars, and I think a Mr. Ellison, had a second mortgage for five or six or seven thousand dollars. They became indebted to Mr. Fox, for work done on the project, excavating ditches, canals etc. The land is worth about \$40 an acre. Mr. Fox, the contractor, had liens on the project it-

(Testimony of Lewis B. Sichlar.)

self aggregating \$32,000. The Puget Sound Bridge and Dredging Company, had a lien there for twenty-two or twenty-three thousand dollars. Gray and Barash had a lien on it for a thousand dollars. The Fox lien was on the canals, ditches, pumping plant, everything they could plaster it on. The Dredging Company lien was on the machinery and pumping plant, and canals and ditches. I think for material furnished and work *down*. There was a lien by a surveyor put against the property for four or five hundred dollars. These liens had a prior claim on all the assets there. Mr. Fox, had started foreclosure proceedings. I believe the Puget Sound Bridge & Dredging Company had started also.

Certified copy of the proceedings for the foreclosure of the lien of the Puget Sound Bridge & Dredging Company, introduced in evidence over same objection, marked Plaintiffs' Exhibit 54.

Certified copy of the Friel, Maltbie & Pearl contract covering Section 20, Township 14 North, Range 26 East W. M. introduced in evidence over same objection, marked "Plaintiffs' Exhibit 55."

Land contract of E. C. Davis and wife, introduced in evidence, marked "Plaintiffs' Exhibit 56," over same objection.

The proceeds of the Columbia River Orchard Company, were sold by me in the bankruptcy proceedings. They were sold for \$11,100 and some odd dollars and cents. That was for the interest of both



(Testimony of Lewis B. Sichlar.)

companies. I was trustee for the Washington Orchard Irrigation and Fruit Company and the Columbia River Orchards Company. Their interest was both sold at one time to Joseph R. Anderson. That carried everything. He assumed the liens against the property paid eleven thousand and some odd dollars. Of that amount \$6500 was paid on the trustee certificates that I had issued. \$2100 and come odd was paid to the contractor for doing emergency work at the time the intake was completed, and the balance was paid out for advertising the sale of the property, care, expenses, etc. The sale covered the 200 acres in the town of Wahluke, the project, the canals and pumping plant, there was no reservation whatever, except one reservation of a claim against Mr. Wakefield, growing out of a mortgage transaction down here in Oregon. It was a second mortgage, given to Mr. Wakefield, by Charles A. Kilbourne, covering the Tobey Brothers ranch. Mr. Wakefield, acted as agent for the Clapp Investment Company. The claim against Mr. Wakefield was for \$4300, which he had failed to turn over to DeLarm, under an agreement had with DeLarm, in which the mortgage transaction was involved. The deal was made in this way, as I understand it. DeLarm, sold a mortgage to Wakefield, who purchased it for the Clapp Investment Company, and in making payment to DeLarm he held out \$4300 out of



(Testimony of Lewis B. Sichlar.)

\$12400. I had no conversation with Mr. Wakefield about it.

The claims filed with me in bankruptcy aggregated in the neighborhood of \$1,300,000. Outside of that quite a few claimants filed their claims directly with the Referee in Bankruptcy. I didn't figure that up. There was a claim for a million dollar mortgage given the Oregon and Washington Trust Company, that was filed with the Court. There was a controversy regarding the validity of that mortgage. The Referee in Bankruptcy, I believe, declared the mortgage void and of no effect.

Certified copy of the record of the Federal Court of the Washington District of Washington, showing the objection to this million dollar mortgage being filed and adjudication declaring it to be invalid introduced in evidence over the same objection marked "Plaintiffs' Exhibit 57."

The claims that were filed against the corporation consisted of labor, material, bond claims, failure to comply with contracts, claims for land and water certificates, etc. I had a conversation with DeLarm in regard to the quantity of bonds, that were outstanding of the Columbia River Orchard Company, prior to his leaving Washington. He stated there were about four and a half million par value of bonds at that time outstanding.

(Testimony of Lewis B. Sichlar.)

Cross Examination.

(By Mr. ERSKINE WOOD.)

The deal referring (to the Clapp mortgage) was made thru the Clapp Investment Company, of which Mr. Lutz, is manager, and Mr. Lutz, is the man that carried on the negotiation with Mr. Wakefield. I understood that the money had been paid to Mr. Wakefield. I don't think Mr. Kilbourne, had anything to do with the sale of the mortgage, but it was a mortgage that Mr. Kilbourne gave to Mr. Wakefield. I was appointed trustee in March, 1912. One company went into bankruptcy after the other, possibly two or three weeks later. The Washington Orchard, Irrigation and Fruit Company went into bankruptcy first.

I found the assets to be, there were some equities around, but few of them, all the property at that time stood entirely, almost entirely, in the Columbia River Orchard Company name. That 200 acres was land that was traded in from Mr. and Mrs. Koppen, I think by DeLarm and deeded to DeGraaf.

The contracts, (referring to the Maltbie & Pearl contract Section 20 and the school land section), were made early in 1911, I think, and very few payments made on any of them. I don't know the exact date, but the parties with whom Maltbie & Pearl had contracts with Davis, Field etc., they foreclosed and took their property back. I think Davis foreclosed in the fall of 1911, at least he started an action at that

(Testimony of Lewis B. Sichlar.)

time, but whether he carried it out then or later on I don't know. The companies began to go down hill during the summer and fall of 1911. Ostensibly the the affairs of the Company were in fair shape in March 1911. The agreement between Wakefield and DeLarm for the repayment of the \$4300, I don't think was in writing.

That (referring to the controversy over the \$4300) came about in this way, it seems that when the Clapp Investment Company paid the \$12400 to Wakefield, he turned it in part, over to DeLarm, and paid the balance of *in* in the bank. The bank shut down and kept it for a debt of Wakefield's own, as I understand it and he didn't have the money then to make good with DeLarm, so it remained a claim of DeLarm's against Wakefield, and I tried to enforce it and get the money in for the benefit of the creditors, but failed. He paid over to DeLarm 7000 and something. The payment of this \$4300 was a matter between DeLarm and Wakefield entirely.

#### Redirect Examination.

The default of the Maltbie & Pearl sections occurred in May 1911. The water plant, pumping station and canal were not quite completed, very nearly. When I became trustee, I made an estimate on them, the cost of putting in the power line, the understanding I had with the power people, was to the effect that if I paid them \$3,000. for the first years power, they would build the line in gratis, the amount

(Testimony of Lewis B. Sichlar.)

necessary for putting in the intake was \$2200, which I had to have done as emergency work, then a matter of eight or ten thousand dollars for cleaning, out the ditches and putting in the cement headworks, etc.

Letter from E. C. Kilbourne, to the Washington, Orchard Irrigation and Fruit Company, dated March 24, 1911, identified and introduced in evidence, marked "Plaintiffs' Exhibit 58."

Recross Examination.

(Questions by Mr. ERSKINE WOOD.)

This letter says, among other things, that the present plant would give a capacity of 10,000 gallons a minute, at low water, and 25 per cent increase over this amount at high water period when you will do the most of your pumping. You never connected up with the power to test it out in any way, did you?

A. No.

Q. And you have spoken of the expense necessary to install a transmission line, to put in cement headworks, and complete the ditches, and complete the intake, but you found nothing to contradict this letter, that the pumping plant itself was complete and a good one, did you?

A. No, the work, as far as that is concerned, is all good. The ditches are first class, the building is good, and the machinery is all of it good standard machinery and fully able to do this work.

(Testimony of Lewis B. Sichlar.)

Q. Mr. Sichlar, did you estimate \$2100. as the cost of completing the intake?

No, that estimate came about in this way. The intake was unfinished and when the waters receded, it left a broken link in there, and it was necessary to fix that before the next high water in case you wanted to use it.

Q. And did you fix it?

A. Yes, and with the permission of the Judge, I had the contractor put in that broken link there; and the water receded to a lower level that year than it ever had been before for a great many years past; then I gave an additional order to put the intake out as far as he could, and that cost the balance.

Q. \$2100.

A. All told, yes.

Q. That was emergency work?

A. That was emergency work, yes.

Redirect Examination.

(Questions by Mr. WILLIAMS.)

You spoke of that being a broken link. Had that ever been completed?

A. No, that was a link in the intake that had been left, as I understood it, for want of material; material was short there, and they went out and did the work, as far out as low water would let them, and then being short of material left the broken link in between the material.

Witness excused.



### M. Isabelle Forbes Recalled.

Letter of W. E. DeLarm, dated September 9, 1911, directed to R. S. Chapman, Seattle, Washington, and identified introduced in evidence over the objection of irrelevant and immaterial, marked "Plaintiffs' Exhibit 59."

Affidavit of W. E. DeLarm, accompanying the Jennie C. Koppen mortgage, identified and introduced in evidence *in evidence* over same objection, marked "Plaintiffs' Exhibit 60."

Assignment of Mary A. Domay, mortgage, identified and the statement introduced in the records as follows:

Assignment shows an assignment of Mary Domay Water Mortgage covering Desert Land Entry No. 1173 and applying to the east half of the southwest quarter, the southeast quarter of the northwest quarter and the northwest quarter of the northeast quarter of Section 10, Township 14 North, Range 26 East, W. M. and dated the 3 day of January 1911, an assignment of the same mortgage read into the record as follows: The date of this assignment is 30th day of January 1911, and covers the same land described in the previous assignment.

Affidavit of W. E. DeLarm, identified and read into the record as follows:

"W. E. DeLarm, being first duly sworn, on oath says that he is the president of the Columbia River Orchard Company, a corporation, organized and ex-



(Testimony of M. Isabelle Forbes.)

isting under the laws of the State of Washington; that the desert land mortgage covering the southwest quarter of the northeast quarter of Section 10, Range 26, Township 14 East W. M., hereto attached, covering Desert Land Entry 1173, all good valid and solvent securities. W. E. DeLarm. Subscribed and sworn to before me this 30th day of June, 1911. Edward J. Brazell, Notary Public in and for the State of Oregon, residing at Portland.”

Affidavit of W. E. DeLarm, dated June 30th, 1911, identified and statement made in the record as follows:

The affidavit was the affidavit given under the trust agreement covering the Jennie E. Koppen, mortgage, on lands in Section 30, Township 14 North, Range 26 East, W. M.

MR. WOOD: I don't know whether the reporter got in the record, it is understood that after this all testimony goes in subject to our objection.

COURT: Subject to your objection, yes.

Letter, by Mr. Hodges, dated June 19, 1911, identified and introduced in evidence, marked Plaintiffs' Exhibit 61.

A mortgage for \$5,750,000. signed by Washington, Orchard, Irrigation and Fruit Company, by W. E. DeLarm, president and R. H. MacWhorter, secretary, identified, and also assignment of the same to the Oregon and Washington Trust Company introduced in evidence marked “Plaintiffs' Exhibit 36.

(Testimony of M. Isabelle Forbes.)

Note accompanying mortgage introduced in evidence marked "Plaintiffs' Exhibit 36.

Financial statement introduced in evidence marked "Plaintiffs' Exhibit 62.

The witness continued, the sales contracts were all in the same form, and were issued on the lands the company had a contract for with Maltbie & Pearl. I don't know what number it was, but it was some of their lands, school section, was Section 16. The sections as I remember were Sections 10, 16 and 20 and all within the Wahluke project (referring to the lands upon which the sales contracts were placed). They issued no contracts, to my knowledge, outside of the project.

Financial statement of the Washington, Orchard, Irrigation and Fruit Company, to the Fidelity and Deposit Company of Maryland, dated March 11, 1911, identified and introduced in evidence, marked "Plaintiffs' Exhibit 63."

Summary of irrigation project of the Columbia River Orchard Company, signed by the Columbia River Orchard Company by W. E. DeLarm president, and A. J. Biehl, secretary, identified and introduced in evidence, marked "Plaintiffs' Exhibit 64."

Financial statement of the Washington Orchard Irrigation and Fruit Company, without date identified, marked "Plaintiffs' Exhibit 65."

Letter to J. H. Fox, signed by Washington Orchard, Irrigation and Fruit Company, by W. E. De-

(Testimony of M. Isabelle Forbes.)

Larm, president, dated April 8th, 1911, identified, introduced in evidence, and marked "Plaintiffs' Exhibit 66."

Minutes of the stockholders meeting of the Washington Orchard, Irrigation and Fruit Company, dated August 9, 1911, identified and introduced in evidence, marked Plaintiffs Exhibit 67.

Agreement between R. S. Chapman, and W. E. DeLarm, of September 9, 1911, identified and introduced in evidence, marked "Plaintiffs' Exhibit 68."

Letter R. H. MacWhorter, to George C. Hodges, dated Tacoma, Washington, 2-25-1911, identified, and marked "Plaintiffs Exhibit 69."

Letter dated March 4, 1911, to the Standard Investment Company from the Oregon and Washington Trust Company, by H. H. Humphrey, vice-president, identified, marked "Plaintiffs Exhibit 70."

Letter of April 28th, 1911, Mrs. Belle Nickel, by the Oregon and Washington Trust Company, identified, introduced marked "Plaintiffs' Exhibit 71."

Witness continued, DeLarm was in *char* of the office generally at Seattle, of the Washington Orchard Irrigation and Fruit Company, and the Columbia River Orchard Company. Mr. Biehl, had one office, was in charge part of the time, from November 1910, when I went there the financial condition, so far as I was concerned wasn't very good. I learned that principally because I didn't get my salary. The other financial embarrassment was, one

(Testimony of M. Isabelle Forbes.)

to half dozen people were sitting around the office all the time waiting for communication with DeLarm, in which most all of them, stated to me that they wanted money. That was from the very first day I went with them, and continued until I left them. That condition existed in February 1911 and thru March. They didn't pay their office rent promptly. I remember because once or twice I took checks to the people whom we rented of and the checks came back to me, marked "N. S. F." "Not sufficient funds." I had two or three checks come back myself, and the telephone company had one or two come back and a manufacturing man there had one or two come back. Several instances, I can't recall them all. These instances relate to different dates. The rent checks were in April and March I think the first check we paid them wasn't good, the second we paid them wasn't good, and then I don't know how they managed after that. That was in the 1911. The parties that *cam* in generally stated their troubles when I would listen to them.

I talked with DeLarm and Biehl, afterwards about them. I didn't go and see DeLarm and Biehl, immediately when they came to the office, that wasn't permitted, oh! they didn't go in and see DeLarm and Biehl, they weren't permitted, I didn't permit them. I was instructed by DeLarm and Biehl to keep them out. They gave me that instruction when I first went there. They told me that I was to find out what

(Testimony of M. Isabelle Forbes.)

a person wanted and see what their business was, and if it related to any business transaction why, I was to make an appointment for them and let them in, if it was just merely a person that wanted to collect anything, that they would have to see them when they could. I was not instructed to make any appointments for those who wanted to make collections.

The first one of these checks that I remember anything about, that was my own check. DeLarm and Biehl both signed the checks, and sometimes Mr. Biehl would give me one and sometimes Mr. DeLarm. The account was DeLarm and Biehl, but either one of the men signed the checks. The last one of these checks I remember anything about was in the summer months of 1911, when they gave Mr. Hunter a check. I don't know what the amount was, and that is the last time I remember anything about the checks coming back.

They didn't have any book accounts in the office. They didn't have any books of the Columbia River Orchard Company or the Washington Orchard Irrigation and Fruit Company, that I know anything about, and they had none of the firm that I know anything about?

There were in the office, employed there, another stenographer and myself. The other stenographer was employed there October 1911, until the Company went into bankruptcy. Before that time they had



(Testimony of M. Isabelle Forbes.)

public stenographers, but no one in the office besides myself. There was no other office help in the office of any kind besides myself prior to the other stenographer.

Q. Is there any other way by which you knew of their financial difficulties besides those dishonored checks?

A. Well, nothing only the creditors as they would come in. I knew them mostly.

They didn't pay their rent promptly or my salary. I received anywhere from \$1.00 to \$20.00, just as they had it they would give it to me. I received 25c one day. I asked Mr. Biehl, for some money. I told him I had to have some, and he, I think, had 35c in his pocket, and he asked me how much I wanted, and I said all I could get, and he said "How much will do you," and I said I have to have lunch money, so he gave me 25c.

Q. Was your salary at that time paid in anything else besides money, and if so, what?

A. Well, I think in the early part of December I took 10,000 bonds, and I credited \$50. which was more *that* the amount they were getting at that time for bonds. That was in 1911, I asked Mr. DeLarm, to give me some money, and I told him I had to have it. He said he didn't have any, that he was anticipating getting some money, but at that time he didn't have any to give me, and I asked him if I could use some bonds and return them or else credit them on



(Testimony of M. Isabelle Forbes.)

my salary at the amount he was getting at that time, and he said Yes, I could do anything I wanted to, which ever way would be more convenient to me either to wait for the money or take the bonds, so I took the bonds and credited \$50. to my account. I sold the bonds, I don't remember just what I got for them. I was familiar with the market on the bonds from March 1911 to the end of the year. I handled the bonds in the office.

I think the first day I went with the company I saw bonds, that was the February issue of the 7% bonds. The bonds were issued in 1910, but they were supposed to be February bonds of 1911. A lot of them were printed in 1910. I don't know when they first put these bonds out. They came from the printers and Mr. Biehl, was signing them when I first knew anything about bonds, and as he would sign them I would put the seal of the company on them, and fold them, and after that I knew nothing about them. The first bonds that I knew anything about I traded some land for, and that was the first that I knew anything about them trading bonds. They were taking in properties, and I don't know that they ever sold any directly from the office for cash. The brokers handled some of the bonds, paid different price for them. There were different series of bonds. There were February bonds that were selling for 4c and June bonds were selling for about 3, October bonds were selling for about 2½c.

(Testimony of M. Isabelle Forbes.)

I can't remember the different sales in the summer months. They were selling for about 4c on the dollar. I don't know what arrangements the brokers had, but they would come in and get the bonds from me and I would take the receipt and amount, and only once to my certain knowledge did I receive any money; money was always turned over to DeLarm, I presume. I think, I took \$20.00. I gave out I think \$10,000 bonds to Mr. Custer, George W. Custer. That was later in 1911. I got \$2,000, in bonds for my property but I didn't trade my property thru the company. They paid out bonds as security for lands.

The only loan that I was particularly interested in was a loan for a \$100 from a Mr. A. D. Hawkins, for which I delivered I think, \$2,000 bonds. I think, that was in May.

When any inquiry was made in regard to the quantity of land they held at Wahluke I always quoted 17,000 acres. I got that information from Mr. DeLarm, that was all I ever knew about it, for instance, in writing letters I would always quote 17,000 acres selling for \$350. an acre, then he would quote this about the \$125. being back of each bond etc. I don't remember the exact wording of the letters, because it has slipped my memory.

We kept no records in the office in regard to these land contracts. I did at first keep a record on a plat used there. I just made that for my own personal

(Testimony of M. Isabelle Forbes.)

use. I just drew the squares on a piece of cardboard and colored them and put the names of each individual who had purchased five acres or whatever the amount *mighbe*. Some of it was in Section 10, 20 and 16.

Receipt of A. D. Hawkins, for bonds upon which he had loaned money, taking the bonds as security were identified and read in evidence as follows: Receipt dated April 27, 1911, receipting for \$8,500. Columbia River Orchard bonds, for a loan of \$1120. for 30 days. Also receipt of May 22, 1911, for 20 bonds of a thousand dollars each, for a loan of \$700. for 30 days. Receipt of June 9, 1911, for 22 Columbia River Orchard bonds of \$1,000. each, for loan of \$1,000. due in 30 days. Also receipt of June 16, 1911. \$25,000. Columbia River Orchard Bonds for a loan of \$1,000. for 30 days. Also receipt of 6|3|11, for \$20,000. Columbia River Orchard bonds for a loan of \$750. for 30 days. Also 25 Columbia River Orchard bonds under date of June 3, 1911, \$1,000. each for \$1,000. loan, due in 30 days from date. Also receipt of 5|29|11 for \$15,000. bonds for 30 day loan of \$500. Also receipt of 6|15|11, \$25,000. bonds as security for a loan of \$1,000. Time due not stated. And a receipt identified by the witness of \$5,000. of Columbia River Orchard bonds without date, for loan of \$750., all of the receipts being signed by A. D. Hawkins and the signatures being admitted as genuine by counsel for defendants,

(Testimony of M. Isabelle Forbes.)

COURT: Who are they given to?

MR. WILLIAMS: Given to the Columbia River Orchard Company some, to Biehl, some to DeLarm and Biehl, and some to DeLarm.

Letter from George C. Hodges to DeLarm and Biehl, dated February 2, 1911, identified and introduced in evidence marked "Plaintiff's Exhibit 72.

Letter from Mr. Hodges, to DeLarm and Biehl. February 3, 1911, identified and introduced, marked "Plaintiff's Exhibit 73".

Letter same parties February 5, 1911, introduced "Plaintiff's Exhibit 74".

Court adjourned until 2 P. M.

MISS FORBES, continued her testimony.

Letter from R. H. MacWhorter to the Oregon and Washington Trust Company introduced and identified, "Plaintiff's Exhibit 75."

For a short time R. H. MacWhorter, signed the bonds as trust officer between the time Mr. Hodges—was here and Mr. Biehl.

Agreement between A. J. Biehl and John Stevens identified and introduced "Plaintiff's Exhibit 76".

Letter of May 3, 1911, DeLarm and Biehl to Leonard Agency introduced, "Plaintiff's Exhibit 77".

Letter of October 4, 1910, Mr. Hodges to Columbia River Orchard Company, introduced "Plaintiff's Exhibit 78."

(Testimony of M. Isabelle Forbes.)

Letter dated October 6, 1910, Mr. Hodges to the Columbia River Orchard Company, introduced, "Plaintiff's Exhibit 79".

Letter October 8, 1910, Mr. Hodges to the Columbia River Orchard Company, introduced "Plaintiff's Exhibit 80"

Letter of December 6, 1910, Mr. Hodges to Columbia River Orchard Company, introduced "Plaintiff's Exhibit 81."

Letter of 1|26|11 Mr. Hodges to Mr. Black, introduced "Plaintiff's Exhibit 82".

Letter of January 27, 1911, Mr. Hodges to F. D. Cooley, introduced, "Plaintiff's Exhibit 83".

Letter February 9, 1911, DeLarm and Biehl by George C. Hodges, introduced, "Plaintiff's Exhibit 84".

Letter of February 11, 1911, DeLarm and Biehl by George C. Hodges, introduced, "Plaintiff's Exhibit 85."

Letter of February 14, 1911, DeLarm and Biehl, by George C. Hodges, introduced, "Plaintiff's Exhibit 86."

Letter of February 15, 1911, written to W. A. Burley Green Lake Station, by George C. Hodges, introduced, "Plaintiff's Exhibit 87"

Letter February 21, 1911, George C. Hodges, to DeLarm and Biehl, introduced, "Plaintiff's Exhibit 88".

Letter February 24, 1911 George C. Hodges to

(Testimony of M. Isabelle Forbes.)

C. H. Graves, introduced, "Plaintiff's Exhibit 89".

Letter March 1, 1911, to DeLarm and Biehl, signed Hodges introduced, "Plaintiff's Exhibit 90".

Letter of March 3, 1911, to DeLarm & Biehl, signed Hodges, introduced "Plaintiff's Exhibit 91".

Letter of March 7, 1911, by Hodges to DeLarm & Biehl introduced, "Plaintiff's Exhibit 92."

Letter of March 14, 1911, to S. C. Douglas, Seattle, by George C. Hodges, introduced, "Plaintiff's Exhibit 92"

Letter of March 21, 1911, to C. H. Graves, by George C. Hodges, introduced, Plaintiff's Exhibit 94".

Letter of March 29, 1911, by George C. Hodges to DeLarm and Biehl, introduced, "Plaintiff's Exhibit 95".

Letter of March 31, 1911, to DeLarm and Biehl, by George C. Hodges, introduced, "Plaintiff's Exhibit 96".

Letter April 3, 1911, to J. B. Lowry, cashier Citizens National Bank, Chattanooga Tennessee, by George C. Hodges, introduced, "Plaintiff's Exhibit 97".

Letter of April 4, 1911, to DeLarm and Biehl, by Hodges, introduced, "Plaintiff's Exhibit 98".

Letter of April 4, 1911, Hodges to DeLarm and Biehl, introduced, "Plaintiff's Exhibit 99."

Letter of April 6, 1911, to DeLarm and Biehl, by



(Testimony of M. Isabelle Forbes.)

George H. Hodges, introduced, "Plaintiff's Exhibit 100".

Letter of April 7, 1911 DeLarm and Biehl by Hodges. introduced, "Plaintiff's Exhibit 101".

Letter April 10, 1911, to William Crawford, Seattle, Washington, by George C. Hodges, introduced, marked "Plaintiff's Exhibit 102".

Letter of April 27, 1911, to O. M. Joseph, signed by Geo. C. Hodges, introduced, marked Plaintiff's Exhibit 103.

Letter May 1, 1911, to DeLarm and Biehl, written by George C. Hodges, introduced, marked "Plaintiff's Exhibit 104".

Letter of May 10, 1911, to W. E. DeLarm, by George C. Hodges, introduced, marked "Plaintiff's Exhibit 105".

Letter of May 15, 1911<sup>m</sup> to DeLarm and Biehl by George C. Hodges, introduced, marked "Plaintiff's Exhibit 106".

Letter of June 21, 1911, to Mr. H. E. Wood, Eugene, Oregon, signed by George C. Hodges, introduced, marked "Plaintiff's Exhibit 107".

Letter of July 27, 1911<sup>m</sup> to DeLarm and Biehl, signed H. introduced, marked "Plaintiff's Exhibit 108".

Letter of July 28, 1911, to W. P. Rauch, not signed, introduced, marked "Plaintiff's Exhibit 109".

Letter August 17, 1911, by George C. Hodges, to

(Testimony of M. Isabelle Forbes.)

W. E. DeLarm, introduced, marked "Plaintiff's Exhibit 110".

Letter of August 18, 1911, to DeLarm and Biehl by George C. Hodges, introduced, marked "Plaintiff's Exhibit 111"

Letter of Sunday, no other date, written to DeLarm and Biehl, signed Hodges, introduced, marked "Plaintiff's Exhibit 112".

Letter of Tuesday 21|1911, written by Jack to De, introduced, marked "Plaintiff's Exhibit 113"

Q. Miss Forbes, what did they generally call Mr. DeLarm?

A. De.

Letter of Tuesday 17th, no other date, to Dear De, signed Jack, introduced, marked "Plaintiff's Exhibit 114".

Letter of the 8|10|11, to Dear De by Jack, introduced marked Plaintiff's Exhibit 115".

Letter of the 8|19|11, to W. E. DeLarm, signed Jack introduced, marked "Plaintiff's Exhibit 116".

Letter of the 8|21|11, Dear De, by Jack, introduced, marked "Plaintiff's Exhibit 117".

Letter of 8|22|11, Dear De, by Jack, introduced, marked "Plaintiff's Exhibit 118".

Letter of August 23, 1911<sup>m</sup> to W. E. DeLarm, by Jack introduced, marked "Plaintiff's Exhibit 119."

Letter of 8|24|11, to Dear De, by Jack, introduced marked "Plaintiff's Exhibit 120".

Letter of August 25, 1911, to R. S. Chapman,

(Testimony of M. Isabelle Forbes.)

signed A. J. Biehl, introduced, marked "Plaintiff's Exhibit 121".

Letter September 1, 1911, W. E. DeLarm by Jack, introduced, marked "Plaintiff's Exhibit 122".

Letter of 9|3|11 to De, by Jack, introduced, marked "Plaintiff's Exhibit 123".

Letter of 9|11|11, Dear De, by Jack, introduced, marked "Plaintiff's Exhibit 124".

Letter of October 11, 1911, Dear De by Jack, introduced, marked "Plaintiff's Exhibit 125".

Letter of October 12, 1911, to De Dear by Jack, introduced marked "Plaintiff's Exhibit 126."

Letter of October 25, 1911, to *De* De, unsigned, introduced marked "Plaintiff's Exhibit 127". Identified.

Letter of November 14, 1911, to Dear Sir by Jack, introduced, marked "Plaintiff's Exhibit 128".

Letter of November 22, 1911<sup>m</sup> to De, by Jack, introduced, marked "Plaintiff's Exhibit 129".

Letter of December 15, 1911, to F. W. Waters, by A. J. Biehl, trust officer, introduced, marked "Plaintiff's Exhibit 130".

Letter without date, to Dear DeLarm, by Jack, introduced, marked "Plaintiff's Exhibit 131."

Letter of December 26, 1911, to W. E. DeLarm, by A. J. Biehl, introduced, marked "Plaintiff's Exhibit 132".

The witness continued, the last time I say DeLarm, I think it was the last of February, 1912. I

(Testimony of M. Isabelle Forbes.)

left his employ the 4th of February, but I saw him frequently.

At this time it is admitted by Mr. Wood, that Mr. DeLarm, has disappeared and is supposed to be dead.

Witness continued, A. C. Gunn, is a financial broker. He wasn't very closely connected with the Columbia River Orchard Company. I think he loaned them money. He would get bonds from me and sell them. I got part of my salary from Mr. Gunn, for two or three months. The first check I got from Mr. Gunn, Mr. Biehl, got for me. I told Mr. Gunn, that I was going to leave, and he told Mr. Biehl, and Mr. Biehl, came in that afternoon and gave me a check for \$25. and told me that they were going to put over a big deal, as they usually said, and if I would stay they would close my account out in a few days, and after I found out I could get money from Mr. Gunn, I went over and got it myself. I got it to apply on my salary. I guess I got a hundred follars or more.

I knew Mr. Morrison, but I don't know whether he sold any bonds or not.

Cross Examination.

(Mr. WOOD.)

I commenced work for the company first of November 1910, and lect November 4, 1912. I don't remember when it was I got the two bits advanced for lunch. There is an accurate date of every piece

(Testimony of M. Isabelle Forbes.)

of money I received from the company, but I haven't that. It is here in the papers. The dates are all in that book. I got the 25c from Mr. Biehl, they seemed to be hard up all the time. Mr. DeLarm, all the time. I don't think they got rich out of this. They seemed to be personally hard up as well as the Orchard Company. The bonds I put the seal on were the February issue of the Columbia River Orchard Company. It was in November 1910. I put the seal on all the bonds, nearly, that went out of the office.

Q. Well, I am trying to distinguish the fact, as a matter of fact, the printer of the Orchards bonds testified they weren't in existence at the time you say.

A. Well, I can't help what he testified. I am only telling you what I know.

I am not absolutely sure whether it was the first day that I went there or not, that I folded the Orchard Companys bonds but I know I wasn't there very long. It would be in November 1910.

I put the seal on the Orchard Irrigation and Fruit Company bonds, I both, sealed and folded them. But I think that was later. I just don't know when they were printed; it was in the summer of 1911. I can tell you nothing about the date, because I never paid any attention to it, but I know it was after we moved in the Empire Building, which was in April 1911.

(Testimony of M. Isabelle Forbes.)

Witness looked at her book, and was asked to state what month you got that 25c

A. May 2, 1911, the first money I got from Mr. Gunn, was on July 8, 1911; then on the 10th I got \$10.00, and on the 11th I got \$25, and on the 13th I got \$15.00; on the 15th I got \$10.00; on the 25th I got \$10.00; August 1st, I got \$10.00, August 23rd I got \$15.00, and on the 26th of September \$41.00 that was all in 1911.

They were getting more and more hard up, in the year 1911, to such an extent that on January 4th, 1912, they owed me \$253., and that is when I left them. They never even had stamps in the office. I had to buy stamps, envelopes and everything else. In December 1910, they gave me \$10.00 for office expenses, and from November 4th until November 10th of that year I spent \$5.46, of it. Mr. DeLarm, took \$2.00 of it for office supplies. They gave me the first week I was there on my salary, and the second work, then they didn't pay me, they said they always held back a week's salary, and they held back a week and two weeks up until such time as they owed me \$253.

I always carried a balance from \$50. to \$100. The bonds I took for my \$50. were the October issue unguaranteed bonds. I took them on December 9th. There were four series of bonds issued to the Orchard Company, to my certain knowledge. The first issue was made when I went with them in November 1910; then later we had a June bond is-



(Testimony of M. Isabelle Forbes.)

sue, which was really on the market before June, then we had an October issued called Series A, and another October issued called Series B unguaranteed bonds. The rate of interest was 7%. The bonds that were outstanding on the trust held by the Washington Savings & Trust Company were 8% that were already outstanding.

Q. Well, this seven per cent bond, I will say for your information, although I think I have already called it to your attention; you seem very sure of it, the printer says were not printed at that date, in November. They weren't printed until after the first of January 1911.

A. Well, I may be mistaken, still I say that I am sure it was in November, I folded those bonds, The seven per cent bonds.

Q. But as a matter of fact, Miss Forbes, you have folded a great many bonds both Fruit and Orchard Company, at different times, and you may be mistaken.

A. I say, I maybe yet, I don't think I am.

I don't know how many they sold. Those 10,000 bonds I took on my salary I credited myself with \$50.00, that is credited the account and charged myself with \$50.00. I don't remember whether I sold them for two, two and a half or three. I sold part of them to a party in Vancouver, B. C. I think I sold some to Mr. and Mrs. Koppen. I bought the 10,000 at \$50.00, and sold them for what I could get

(Testimony of M. Isabelle Forbes.)

on them. They were not on my hands as collateral for \$50.00. That was on December 9, 1911.

Redirect Examination.

(By Mr. WILLIAMS.)

The bonds I got were October bonds, the interest was payable in 1912. I got them on December 9, 1911.

The Washington, Orchard, Irrigation and Fruit Company had some bonds printed, but I don't think that there were but two lots that were given out to anyone. I think Mrs. Koppen got some, and Mr. Armstrong got some, and that is the only two people that I know anything about.

My unpaid salary at the time I quit work was \$253. I was acquainted with the land certificates that they issued. They were issued to take up bonds, that is what I understand. I don't know exactly how many of these they put out, but there is a book memorandum here of the total amount. I don't see the book here.

Witness identified one issued to herself. The certificates were all in that same form. One to witness introduced in evidence, marked "Plaintiffs' Exhibit 133."

I knew that a receiver was appointed for the Columbia River Orchard Company in March 1911. I received a call from him. At that time I really didn't know what a receiver meant. It was Mr. Heaton, one of the witnesses here. He came into the office and asked me for the books and records, and I said

(Testimony of M. Isabelle Forbes.)

“why I hadn’t any,” and he told me who he was and said he had been appointed receiver, and he wanted all the books, papers and everything connected with the company, and I gave him privilege to go thru. We had three offices and I just told him to (*go*) thru and take everything he could find, but not to come over on my side. I didn’t know who he was or anything about it. He asked me, if I had any bonds, I said, “Yes, I have,” he said he would take them. I said, “No, you won’t,” then he told me that he had to have everything, that the Court had appointed him receiver for the Company, and that he had to have everything, and I told him he could, but I didn’t see him take any. That was the only receiver that I ever knew anything about.

Recross Examination.

(By Mr. WOOD.)

I was their general office woman there. I always posed as a bookkeeper, yet I knew something about stenography before I went with them.

Q. Now, the point I want to bring out—you seem to be really a very capable young lady, and why did you stay with them to the close if they weren’t paying you your salary?

A. Well, I guess it is for the same reason we are all struggling. Just the same reason you are trying this case, I guess, to try to win. Every one told me—there was only one person of all the people I knew who told me to get out of the company, and that was

(Testimony of M. Isabelle Forbes.)

Mr. Gray, Mr. Clarence W. Gray. About the first or second day I went with the company, he told me I would have to be very careful to get my salary, or I would have to do as the girl before me did. He tried to discourage me in that way, but every one else told me that they thought everything would be all right, and I got so deep into their debt, I couldn't figure any other way, only staying through.

I hoped right along they would win, because Mr. DeLarm always talked to me about the great big deals they were going to put thru, and I thought some day I would really win.

Mr. Gray, was just one of the men that frequented the office. He was not a lawyer. I think he had some connection with the company, but not after I went with the company. I don't know what the relation was. Mr. Custer, who got some bonds once, was a lawyer. He acted in that capacity. There were two or three lawyers connected with the company, he was one of them.

By the COURT: Miss Forbes, I don't know whether I understood your testimony. Was there any record kept in the office, to your knowledge, of the bonds issued.

A. Only what I kept. The last issue of the bonds I kept track of them, because I numbered them with a numbering machine.

COURT: What issue is that?

A. October issue, unguaranteed bonds.

(Testimony of M. Isabelle Forbes.)

COURT: The last issue?

A. Yes.

COURT: The bonds issued prior to March 1, 1911, did you have no record of them?

A. No, I didn't have any record of them, only as the bonds were cancelled. The February bonds that were cancelled, we tried to keep track of them, but I don't think we kept it up.

COURT: What do you mean by February bonds?

A. That is the first issue of bonds, February seven per cent bonds.

COURT: Do you mean issued in February, or due?

A. Payable in February, that is the way we designate.

COURT: You don't know then what were outstanding then?

A. I don't know what number of February bonds were out, neither do I know what number of June bonds were out. There were 711,000 of them unguaranteed October bonds.

Q. When were the June bonds issued?

A. They were on the market before June 1911.

COURT: How early in 1911.

A. I don't remember just when we got those bonds out.

Q. (Mr. WOOD): A lot of the bonds kept coming in and being redeemed and being replaced by other bonds didn't they.

(Testimony of M. Isabelle Forbes.)

A. Yes, I think Mr. DeLarm's idea was to get in the early issue, and put out a later issue. He would always give a premium on the old issue. We didn't keep any record of that.

Q. What do you mean by premium?

A. For instance, it would depend altogether on who we were dealing with. Maybe someone would come in with 2,000 February bonds and would demand 4,000 June bonds, or 6,000 October bonds. We would give more of the later issue to redeem the early issue.

In my testimony I spoke of my own case, and said \$10,000 bonds, I meant 10,000 dollars face value of bonds.

Q. And you meant that all the time you haven't been saying the number of bonds, but the dollars of face value?

A. Yes, that was the number of dollars face value. I meant I had \$10,000 face value of the bonds.

**[Testimony of J. L. Blalock, for the Plaintiffs.]**

J. L. BLALOCK, being called as a witness on behalf of the plaintiffs, duly sworn testified.

(Question by Mr. WILLIAMS.)

I reside at Arlington, Oregon. Resided there in the town for eight years, but in the country for 32 years. Occupation farmer. Am acquainted with the Tobey Brothers ranch, belonging to Frank and Will Tobey. Probably twenty years ago that I was



(Testimony of J. L. Blalock.)

over part of the lands, since I first knew part of the land, but I cann't remember dates.

Am familiar with land values in that neighborhood, and were familiar with them in March, 1911. Of the character of the lands that the Tobey boys owned. I considered that land, any agricultural land in that country, that is in proper state of cultivation worth from twenty to twenty-five dollars an acre.

Cross Examination.

(By Mr. ERSKINE WOOD.)

I reside at the east end of Shuttler's flat, on the east of it, not on the flat to amount to anything. The flat is one of the best pieces of land in northern part of Gilliam County. One of the best wheat lands there. All that belt of country, north of Rock Creek, is about the same character of soil, very little difference in it. I don't think there is any difference in the soil from Gwendolen or North Gilliam. I think the soil is about the same all though there is a stretch of country thru there that is not as deep soil as it is further north. The rain fall is about the same. It is true that they have more rain in the Condon country.

I have land there now twelve or fourteen miles from the Tobey land in the Blalock country, northwest. I consider it worth \$20 or \$25. an acre. I have 3320 acres, haven't sold any, but have offered to sell my place for \$25. an acre. Never have had a taker. I have never put my land on the market trying to urge a sale at all.

(Testimony of J. L. Blalock.)

The crops up there between the years 1907 and 1912, were light, very light, all over that district. Four seasons there, we were very light. Naturally it would be a little discouraging, in the spring of 1912.

Q. I meant, in the spring of 1911, after these three disastrous years, the people were kind of discouraged, weren't they?

A. Well of course, it made pretty hard times, of course, when the crops aren't good.

I heard of one sale made this last spring for \$20. There hasn't been much land changing hands. There is very few sales anywhere in the country, nothing only trades, trade is all there is anywhere. It might be possible that sales have been made as low as \$10, or \$11, or \$12 an acre, I haven't heard of any. I heard of one for \$30—partially in trade. That was the Ed Tobey trade. There have been sales of land there for \$10. an acre, 15 or 20 years ago, probably land could have been bought for \$10. an acre, I should judge 18 or 20 years. I can't remember of course, how long it has been since the high price on land. I don't recall any sales between \$15. and \$20. an acre during the past three or four years. There is so few that I don't remember a sale except the two that I mentioned, anywhere in that part of the country. There may have been sales up around Condon. I see a notice in the paper once in a while, but it never *give* the price, you know, probably a consid-

(Testimony of J. L. Blalock.)

eration of \$10. or something of that kind. There is more people coming in at the present time, that is, there is more people there than there was 15 or 20 years ago, but of course they were homesteaders.

Q. But were there more people there in 1911, *that* there were in 1905.

A. Well, that is pretty hard to answer. I don't know of anything that has ever been abandoned.

Redirect Examination.

(By Mr. WILLIAMS.)

The greater portion of the farms are good sized farms. It is a sparsely settled country, not a thickly settled country by any means. They seem to want to farm on a large scale, of course they don't like to take up any small proposition.

Recross Examination.

(By ERSKINE WOOD.)

My land compared with the Tobey Brothers land is of just about the same character of soil. Of course they are a little farther back, they are farther from the railroad, and I wouldn't consider it quite as valuable for that reason. As far as the character of the soil is concerned I consider it just about the same. We have to go on values, something about how the land lies, so that you can get your wheat to market. It costs more, of course, for them to market their grain than it does me. As far as the land is concerned I consider it just as good as mine. It lies well, of course, it is rolling, it is all rolling prairie,

(Testimony of J. L. Blalock.)

owing to the distance from the railroad I would consider theirs of slightly less value than mine. \$25. an acre is the least money that will get mine.

Cross Examination.

(By Mr. FLEGLER.)

In 1911, it was a little discouraging. There was a lot of wheat that wasn't cut in the country, quite a lot of it. 1911, was the one year that I remember but what the grain was cut. That year we had on the place six or seven hundred acres that wasn't cut. It should have been cut but it wasn't. There was 320 acre in one place I remember that wasn't cut at all. It would have paid to have headed it. My place was rented, and a lot of creditors came in, and they thought they knew more about it than anybody else, and they thought they ought to turn the stock in and they did, but they lost by it.

Redirect Examination.

The branch road runs within five miles, I think, of Olex. Mikkalo, I should judge to be about seven miles to the nearest point of the ranch to this place.

**[Testimony of R. T. Cox, for the Plaintiffs.]**

R. T. COX, being called on behalf of plaintiffs, duly sworn, testified as follows:

(Questions by Mr. WILLIAMS.)

I reside in Portland, Oregon, am acquainted with farming land in Gilliam County, near the town of Olex, to some extent. I have charge of certain land

(Testimony of R. T. Cox.)

in that immediate vicinity. I am there about two or three times a year. Am only familiar with the Tobey lands in rather a vague way. My people whom I represent, something over 1000 acres, which joins part of the Tobey Brothers land, on the south. The county road passing in between. I am not very familiar with the Tobey Brothers Land, except that portion I have seen from the road. I don't know that I have ever been on the land. I have an opinion as to the value of our tract. We have a 1600 acre tract about eight miles southwest in the same township. My opinion is based upon knowledge of lands and valuations in that neighborhood, in a general way. My opinion would be based largely on hearsay. I don't know of many, if any sales having been made there in recent years, and the quality of the land varies so, in different localities.

If the land was within a reasonable distance from a railroad, which distance I would say, would be about eight or nine miles, worth about a dollar an acre for every bushel of wheat that it would produce.

Cross Examination.

(By Mr. ERSKINE WOOD.)

I would think that spring wheat there would generally yield on an average ten or fifteen bushels per acre, and fall wheat perhaps from twenty to thirty; that is the general average for quite an area of country around there. They could use either fall or spring sowing. They generally plow as much as

(Testimony of R. T. Cox.)

they can in the spring, what they call summer fallowing. That land is sowed the following fall, and if they have an open winter or any additional time, they plow and sow in the spring. That average yield which I spoke of is based upon a fair rain fall, fair season and not on a period of years including the bad ones. It didn't average that high on my place. My tenants, I am sorry to say, were rather poor farmers, and I do not think the land got justice in the way of tillage.

The estimate of yield for that district takes in the whole of Shuttler's flat. The flat district, it has been considered better wheat land, than land farther to the north. For instance, better land than the land in the Blalock country. It is rather difficult to say exactly where Shuttler's flat begins and where it ends, but I should say that the Tobey ranch is from two to three miles away. 1907 and 1912, were very good years. The intervening years were very light, owing to the lack of rain fall. I don't know of any sales having been transacted in the spring 1911.

#### Redirect Examination.

In the summer of 1912, some wheat was being sold at 70; F. O. B. I don't think the price averaged much, if any over that, until about the middle of January. I sold my wheat about the first of January, and got about 70c for it. A very short time after the market began to go up. I don't remember the price in 1910, I didn't have any to sell in 1910. In



(Testimony of R. T. Cox.)

1912 on our place the average yield was about 20 bushels, but that included fall wheat, spring sown wheat and quite a good deal of volunteer. On a small portion of the fall sowing, we got something over 50 bushels. That was on a 5 acre tract, which was staked off and entered for a special agricultural prize, that was offered in Gilliam County, that is why I happen to know of the good yield of this particular piece. There was about a half section in fall wheat, just exactly what the yield was I am unable to say. I only have the total acreage and the total yield. We had in about 1300 acres, and got something over 23000 bushels. I am not absolutely positive as to the acreage, but I am as to the yield.

#### Recross Examination.

I meant to say that the average yield on our place for the season 1912, was 20 bushels, in 1911, it was very light. I think we had in 800 acres and got three or four bushels to the acre. It wasn't worth cutting. 1910, it was very light. It was no better than in 1911. I am sure. It was all cut. As a matter of fact the tenant, having his own combine and equipment, cut it all over, but the yield was very light in both these years, practically the same in 1909, 1910, and 1911. I don't think we got much, if any to exceed three or four bushels per acre in those years.

**[Testimony of L. O. Ralston, for the Plaintiffs]**

L. O. RALSTON, witness called on behalf of plaintiffs and first duly sworn testified as follows:

(Question by Mr. WILLIAMS.)

I reside at Portland, Oregon, resided previously in Gilliam County, at Olex, principally. I was in Olex and vicinity about twenty years. Lived there in 1908. Since then for the first few years I was there very nearly half the while.

I own land there in Section 16, Township 1 South, Range 22 East. It is just across the road from some of the Tobey land. I think I am generally acquainted with land values in that neighborhood, and am familiar with the land known as the Tobey Brothers' ranch. For the last 15 years I think, that kind of land has been selling from \$20 to \$25 an acre. March 1911, I think it was worth as much then as it is now. We have had some light crops, but we have had them a good many times since 1890. My opinion is that it is worth from \$20 to \$25 an acre now and was then.

**Cross Examination.**

We have had a good many light crops at different times since 1890. They have run about every ten years. They will begin to get light and the next years will begin to get heavier again. I have not kept an exact record of it, only in a general way. Living there since 1880.

(Testimony of L. O. Ralston.)

Q. Do you mean they started with pretty good crops, and then gradually get lighter and lighter for ten years, and then start in again with good crops?

A. The seasons vary in about that way, in my experience.

They have more rain here some years than they do others. It will vary along between those periods. I think there has been some land sold there for \$20.00 or \$25. an acre. I understood the Tobey Brothers sold theirs to the Columbia River Orchard Company for \$25. or \$30. I sold a 160 acres a couple months ago, about the same quality of land, and about the same distance from the railroad, about the same distance from the river, in 1 North, 21 East, it was an average piece of land. I got \$20. an acre for it. Know of no other sales like that. That piece of land was about 12 miles from the railroad. I think from Suttler's station. That was sold to Ed. Tobey, isn't paid for yet. He hasn't got his deed. He is to pay for it when the deed is given him. Ed Tobey sold his. There has been some land selling every year in the country. I don't remember any particular sale right now in the district around Olex. Land has not been selling as freely as it has. I haven't looked for any buyers. I am not very well posted as to that whether people want to sell and are looking for buyers. 1911 was a very light year. There were three or four years there, which was very light. I presume that naturally makes land hard to sell and buy-

(Testimony of L. O. Ralston.)

ers few. I have some land for sale. I hold it at \$20. It is close to the Tobey Brothers, right south of theirs.

Redirect Examination.

The land I sold to E. O. Tobey, was not improved in any way, no fences on it. It used to be fenced to itself, but I think it is in the field with the Tobey farm now with a fence on it.

[Testimony of J. A. Ward, for the Plaintiffs.]

J. A. WARD, being called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

(Questions by Mr. WILLIAMS.)

I reside in Portland, Oregon, previously resided in Gilliam County, about eight miles from Olex, also at Arlington. I was at both places. I moved down there in 1884, and left in 1903. I have been back there, not to live, three or four times. I have interests up there and go up there once in a while to look after them. I have quite a large body of land sold under contract. I am familiar with the land in the neighborhood of Shuttler's flat.

I can place an estimate on the land, that I think it is worth. I know the Tobey Brothers ranch, have been over it. During March 1911 and up to the present time I wouldn't put the value less than \$20. on any of that land that the Tobey Brothers own, at that time, at the time that I was in the country. Of course, understand that I consider that a cash value.

(Testimony of J. A. Ward.)

The Tobey Brothers ranch compared with the other land in that neighborhood, is very much the same. It is considered one of the best ranches in that entire country.

Cross Examination.

My place is sold for half the crop. While my place was very badly farmed, there was a dispute raised over it, and one or two years it wasn't farmed at all. My place is twelve quarter sections. I am interested in the same place. Would be 1920 acres. My place is about four or five miles east, almost due east, of the Tobey ranch.

(Questions by Mr. FLEGLER.)

I think there was very little crop in 1911 of mine. I say that the entire country was very light in 1909, 1910 and 1911. There were a few places there that raised some crop. In nearly every instance where there was no crop it was more the fault of the farmer than of the land. The yield didn't amount to much, five or six bushels would be an average throughout that neighborhood, in those years, not over that. Some of it wasn't worth cutting. Some places grew up with weeds, but that I think was a great deal the fault of the farmer. Naturally it would be discouraging, not only to the owners, but to the lessees.

I will tell you exactly how I arrive at values. It may be that you will only have two or three or four light crops, only pay expenses. Now it is possible in that country to get \$20. to \$25. an acre from the



(Testimony of J. A. Ward.)

land in one crop. In 1891 I had land that netted me \$26. an acre one crop, of course we had big prices 80c or 87c and it was a wonderful years, and very often you get crops there, one crop will pay for the land at \$20. and acre. Everyone must understand that we are going to have failures in that country but they judge by the general crop for 10 or 15 years in judging the price of land. I farmed twenty odd years, and I only had one crop that didn't pay expenses, and that was in 1984 and '93, outside of that they all paid expenses, and some paid good dividends.

[**Testimony of E. O. Tobey.**]

E. O. TOBEY, being called on behalf of *witnesses*, first duly sworn testified as follows:

(Questions by Mr. WILLIAMS.)

I reside at Eugene, Oregon, principally. Previously I have resided near Olex on Shuttler's flat. I owned land on Shuttler's flat. About the latter part of March, the deal was consummated, since I owned it. I resided there 20 years. Have been there usually, since residing at Eugene, three or four times a year. I stayed there last summer three months.

Am acquainted with the ranch known as the Tobey Brothers ranch. I knew it, walked over it, rode over it hundreds of times before it was ever farmed at all. I am a brother of W. L. and F. L. Tobey.

I am familiar with the land value in that neighborhood and was familiar with them in the year 1911.



(Testimony of E. O. Tobey.)

I was familiar in a general way with the equipment that was on the Tobey Brothers' ranch, before they traded in 1911. The way I figure values there, if a acre of land, or a farm, a number of acres will produce a certain per cent, we will say seven or eight per cent, if it is on \$25., it is worth \$25., if it will raise that on \$30., it is worth \$30. That is the way I figure values. The land in Shuttler's flat and that immediate neighborhood is worth \$25. to \$30., an acre, and was worth the same in 1911 as it is now. The Tobey Brothers ranch I consider worth about \$3. an acre less than mine. Mine I have just sold my place for \$30. an acre, and I put a value on the Tobey Brothers ranch at \$27. an acre with the equipment.

#### Cross Examination.

(By Mr. C. E. S. WOOD.)

This is an average spring in that part of the country. The conditions are good now at the present time. I don't think as much moisture as last year. 1911 was a very bad year. Better this year than in 1911. The price is the same this year as in 1911. I don't see why it shouldn't be. One failure never discourages me. I rate the value according to the interest that is brought in. I don't figure from any one year. My land some years would run in debt, and other years would make as much as 20 per cent clear, and other years, I have made as high as 40 per cent. I take the average ever since I have been farming about

(Testimony of E. O. Tobey.)

28 years. I didn't make a profit every year. 1909 and 1911, were very bad years, there was no profit either year, in fact we run behind. Those are the only years that I haven't paid expenses since I have been farming. I have been farming the last six years about 5800 or 5900 acres, that is about 2800 or 2900 acres each year. I have that much grain each year. It is a little over half of it is my own.

The method of farming, pulverizing the top soil, and keeping mulched etc. Never have used anything but a harrow for that purpose, used horses. I sold my land in March this year, \$30., an acre. It was a trade, but the trade was as good as cash. It was for Portland property, on the east side, 7th and Belmont Streets. The lower floor and basement is used as a bakery, and the two upper floors used as apartments. It is 100x200 feet. A three story brick building. Brings in \$720. a month in gross. The taxes this year was \$735.90. Insurance whatever I am minded to carry. The building is new. Haven't written off anything yet for depreciation.

#### Redirect Examination.

I traded 3280 acres. The difference between my land and that of my brothers is that theirs is a little farther from the market, a little more what we call rough land, that is land not plowed.

[Testimony of Mrs. Jennie C. Koppen, for the  
Plaintiffs.]

MRS. JENNIE C. KOPPEN, a witness called on behalf of plaintiffs, being first duly sworn testified as follows:

(Questions by Mr. WILLIAMS.)

I reside in Wahluke, Washington. Resided there 19 years, and am a wife of F. C. Koppen, and the daughter of Mary A. Domay. I am not the only child. I have two brothers and a half sister. My homestead is in Section 10, under the Wahluke project, 155 acres a trifle over I think. I sold 80 acres to the Columbia River Orchard Company. My mother got the patent to her land in her own name. She sold it, I think, it was deeded to the Washington Orchard, Irrigation and Fruit Company.

Exhibit marked 41 for identification, handed witness. I have no recollection of that contract, but that is my signature. As I recollect it I simply made a deed to the company. The deed was made about April 22. They gave my mother bonds for her homestead, and she signed the deed herself. I think it was April 22nd, the same date as my own, 1911. Mother got \$30,000. worth of bonds for the 160 acres. They gave me \$17,000. worth for about 80 acres. The river cuts out a small corner, and we saved out two acres for our home place, probably 74 or 75 acres. They didn't figure at any price per acre, but just

(Testimony of Mrs. Jennie C. Koppen.)

said \$17,000. The town of Wahluke is situated on my homestead and was a part of the 80 acres.

I talked with Mr. DeLarm quite often as to the other lands that were owned there by the Columbia River Orchard Company or the Washington Orchard Irrigation and Fruit Company in that neighborhood. He never told me they owned any, for I knew they didn't. He told me they had a contract for half of section 16, and also a contract for Section 20. I took up a Desert claim in Section 30.

Desert Land mortgage handed to witness and signature identified as her's and her husband's covering the East half of the Southeast quarter, Northwest quarter of the Southeast quarter and Northeast quarter of the Southwest quarter of Section 30 Township 14 Range 26 East W. M., dated 16th day of September, 1909.

Witness continued, that is the description of the desert land claim in Section 30. Witness was handed a mortgage covering Desert Land Entry No. 1124, dated September 16, 1909, covering East half of the Southeast quarter, Northwest quarter of the Southeast quarter, and Southeast quarter of the Northeast quarter of Section 10 Township 14 Range 26 East, W. M. in Grant County, Washington, the signatures thereto identified by the witness. Both mortgages were handed witness and she was asked to explain how she came to sign both of the instruments, while this is the original mortgage (indicating) I had heard

(Testimony of Mrs. Jennie C. Koppen.)

that sometimes people took out a page and substituted another.

Such a thing happened to my brother one time, and I thought I would be a little smart and I signed each page of this, and made an exact copy with my name at the bottom of each page in order that I might have one just like the other one, couldn't be any dispute about it, and Miss Lofrey, the vice president of the company signed it, but I thought I would like to have the president, himself sign it, and so she said she would take it to Spokane and have him sign it, and send it back to me, and it was never found again until I saw it in the District Attorney's office last spring.

Q. Now has either one of those been altered, and if so, which one?

A. The last one that you handed me is a description of my homestead.

Q. What alteration has been made in the instrument since you originally signed it?

A. When I first signed it, the entry covered the east half of the southeast quarter, and the northwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter, which was changed so the northeast of the southwest read "southeast of northeast," which would exactly fit the homestead, and from Section 30 to Section 10. The section number was changed.

Q. Now examine the note that accompanies the



(Testimony of Mrs. Jennie C. Koppen.)

second mortgage and state whether or not you signed the note.

A. No, I didn't sign that note. That isn't my signature.

Q. Then if I understand you this Desert Land Mortgage was executed in duplicate.

A. Yes, one for the company and one for me.

Q. And one of them has now been changed?

A. Yes, sir.

A. And the note that bears your signature, but wasn't written *by* you attached?

A. Yes, sir.

Q. Where did you see these two mortgages. You said you saw them some time ago.

A. Mr. McCourt showed them to me. I asked Mr. DeLarm, is he had seen anything of that copy in his papers, and he said he hadn't.

MR. WILLIAMS: I would like to have the records show that it is the same mortgage that Miss Day testified too.

MR. WOOD: What was the effect of her testimony?

MR. WILLIAMS: One of them had a forged signature.

I talked with Mr. DeLarm, in regard to the securities behind these bonds just about the time that we made the sale. He said that behind the bonds were first mortgages and deeds of different *pies* of property, and I asked him where they were, I knew they



(Testimony of Mrs. Jennie C. Koppen.)

didn't own anything except what I had sold him, and he said they were in eastern Washington, Idaho and Oregon and over the coast, and just generally everywhere around. I talked with him later in regard to the securities every time he came over I asked him about it, and he told me each time that they were all well secured. That there was 125c behind every dollar's worth of them and besides that they were guaranteed by the Washington Orchard Irrigation and Fruit Company.

Q. Now, the first time you talked with him about it, did he say anything about these water mortgages being behind the bonds?

A. No, I don't think he had any yet. No, no I know he didn't say anything about it. Told us just about the first mortgages and the deeds. He never claimed until the very last that the water mortgages had anything to do with it at all.

At the last there, I said, "Mr. DeLarm, what is behind these bonds? Is there really anything?" And he said "Yes," and I said, "Well, what is it?" and he hesitated and I said, "I want to know just what is behind the bonds?" You have talked about it and said they were good, and all. Now, what is it that is behind them?" And after a pause of a few minutes he said "The project over here."

I don't recollect that he said anything about the water mortgages, of course, he might have, I don't remember he said so, just said the project over there.

(Testimony of Mrs. Jennie C. Koppen.)

We had been talking about the pump house you know and the ditch and all that. The conversation took place in our dinning room at my home. I can't place the time exactly. It was late in the fall of 1911, late in September, or else early in October. It seems to me if you could place the time that he came over with Mr. Clapp and Mr. Sichlar and two other gentlemen were with him at that time. I think that was the time. It was late in the fall, the late peaches were ripe, I know.

The fall of 1911, he told me that he was trying to interest Mr. Clapp, in the project, to get him to put some money in it, that was Cyrus F. Clapp. They came to our house and made a little call, they didn't stop over night. I think they came in in the morning, the auto met them at the train you know, and brought them over and took them back that afternoon. The ditches are not completed yet. The digging is all done in the main ditch, but the laterals are not, neither is the flume in the main ditch.

On the north branch of the ditch you remember in the map it divides and runs up kind of like that, (indicating) in that part of the ditch there are two flumes, one will have to be 1,000 feet long, I heard the engineer in charge say, and it will in places be as much as 24 or 25 feet high, and the other one is the shorter one, that will probably be about five or six hundred feet, and it isn't quite so high as the other. Then in the other part of the ditch, the other

(Testimony of Mrs. Jennie C. Koppen.)

branch of the ditch, there is still another flume, even higher than the first one I mentioned. There have been three laterals started, none of them have been completed. The way the land lies, the ditch runs kind of on high land like that, (indicating) and there is a swale between there and the river, and they have to put in a lateral to run the south side of that swale or siphon across. They have one section partly finished, and I believe were to put in some more pipe and run it along, in fact, they can't put water on any land they have contracted for as the ditch stands now, except mine, a little part of mine, until they put in the rest of these laterals. They have never been in position to put water on any of it. Not on any land for which they have a water contract, except that little corner of mine.

I am acquainted with E. C. Kilbourne. I have seen him in my own home. I can't place the date exactly, but I think it was early in April 1911. I had a conversation with E. C. Kilbourne, in regard to whether or not he was paid for the pumping plant, with a little apology to Mr. Kilbourne for asking him such a personal question, I asked him if he had been. He said he had been paid, and not only paid, he had been paid for more than he had done, for he had still another unit to put in, to lift the water on to another level about 20 feet higher. He told me that they had turned over to him the Tobey Brothers ranch down in Oregon. He said they had traded bonds for it. I

(Testimony of Mrs. Jennie C. Koppen.)

think it was after March 1911, that he finished the pumping plant.

[Testimony of F. L. Tobey, for the Plaintiffs.]

F. L. TOBEY, being called on behalf of plaintiffs, being duly sworn, testified as follows:

(Questions by Mr. WILLIAMS.)

I reside at Merlin, Oregon; have resided there sixteen months. Previous to that in Portland, and previous to that in Gilliam County, Oregon. Am one of the plaintiffs in the case. My age is 42.

I went to Mr. Sherlock's office in regard to the sale of the land there, seeing an advertisement of the Northwest Exchange Company, in the papers we called there to see if we could dispose of our farm property. If they could dispose of the property for us, and we listed it with them at \$25. an acre. That was for the bare land. A little later on we went in to see if he had anything to offer or any prospects, either that, or he called us by phone, I don't remember which, and after talking a few minutes with him he asked us if we would be interested in some bonds. We told him we were willing to investigate anything, if there was any merit in it, we might consider them, so he called by phone Mr. Humphrey, to his office, and he talked to us a little while, gave us a brief outline of the Wahluke project and their bonds.

He said they had an irrigation property on the up-